March 5, 2008

The Honorable Anne K Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, D C 20423

RE Docket No NOR 42101, *E I du Pont de Nemours and Company v CSX Transportation, Inc*

221768

Dear Secretary Quinlan

Please find enclosed for filing in the above referenced matter, an original and ten (10) copies of E I du Pont de Nemours and Company's Reply Evidence - **PUBLIC VERSION** Also enclosed is a compact disk containing written text in pdf format

An extra copy of this filing is enclosed for stamping and returning to our offices

If you have any questions, please do not hesitate to contact the undersigned

Sincerely,

Nicholas J DiMichael
Jeffrey O Moreno

ENTERED
Office of Proceedings
MAR 06 2008
Part of
Public Record

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

E I DUPONT DE NEMOURS AND COMPANY Complainant, v CSX TRANSPORTATION, INC , Defendant	)	Docket No. NOR 42101

COMPLAINANT'S REPLY EVIDENCE

Nicholas J DiMichael
Jeffrey O Moreno
Karyn A Booth
Eric W Heyer
Thompson Hine LLP
1920 N St N W , Suite 800
Washington, D C 20036

Attorneys for E I du Pont de Nemours and Company

March 5, 2008

PUBLIC VERSION

TABLE OF CONTENTS

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

E I DUPONT DE NEMOURS AND COMPANY	)	
Complainant,	)	
v	)	Docket No NOR 42100
CSX TRANSPORTATION, INC ,	)	
Defendant	)	

COMPLAINANT'S REPLY EVIDENCE

Complainant E I du Pont de Nemours and Company ("DuPont") hereby submits its Reply Evidence in response to the Opening Evidence of defendant, CSX Transportation, Inc ("CSXT"), filed in this proceeding on February 4, 2008 This Reply Evidence consists of three parts (a) an Argument that summarizes the evidence submitted and discusses the legal standards to be applied in this case, (b) the Reply Verified Statement and accompanying exhibits of Mr Thomas D Crowley, President, L E Peabody and Associates ("Crowley Reply V S "), and (c) various exhibits from both public sources and discovery of CSXT in this proceeding

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

E I DUPONT DE NEMOURS AND COMPANY Complainant, v CSX TRANSPORTATION, INC , Defendant	)	Docket No NOR 42101

PART I —ARGUMENT

DuPont has challenged the reasonableness of CSXT's rail transportation rates in this small rate case, and two others, under the Three-Benchmark approach adopted by the Board in *Simplified Standards for Rail Rate Cases*, Ex Parte No 646 (Sub-No 1), decision served September 7, 2007 (petition for reconsideration pending) ("*Simplified Standards*") In this proceeding, DuPont has challenged CSXT's rate for the movements of nitrobenzene, STCC 2815147, from Pascagoula, MS to Neuse, NC

Pursuant to the procedures adopted in *Simplified Standards*, DuPont and CSXT simultaneously presented Opening Evidence on February 4, 2008 In their opening evidence, each party identified its initial group of comparable traffic from the Board's Confidential Waybill Sample for the years 2002-2005, applied the Board's formula for adjusting the average revenue to variable cost ("R/VC") ratio of the comparable traffic group, and presented evidence of "other relevant factors" to make further adjustments to the R/VC ratio of the comparable traffic group In addition, DuPont also presented its evidence of CSXT's market dominance over the issue

movements, including evidence regarding the variable cost of the movement in order to satisfy the "jurisdictional threshold" requirement of 49 U S C 10707(d).

According to *Simplified Standards*, in Reply Evidence, each party must select its "final offer" comparison group A party may select its final comparison group only from movements contained in either party's opening evidence comparison groups Furthermore, any movement that was in both parties' opening evidence comparison group must be included in each party's final comparison group *Simplified Standards*, p 18 The Board then will select the comparison group "that it concludes is most similar in the aggregate to the issue movements," as the foundation for determining a maximum reasonable rate for the issue movements *Id*

DuPont presents this Reply Evidence and Argument in seven parts Part I responds to CSXT's charge that this case is not appropriate for resolution under the Three-Benchmark approach Part II responds to CSXT's attacks on the Three-Benchmark approach itself. Part III addresses the differences between the parties' variable cost calculations for the issue movements Part IV identifies the factors that DuPont applied to determine its "final offer" comparison group and responds to those factors that CSXT applied in its opening evidence Part V responds to CSXT's evidence of "other relevant factors "[1] Part VI presents the maximum R/VC ratios for the issue movements based on the DuPont "final offer" comparison group, as adjusted by the "other relevant factors" presented in the DuPont Opening Evidence Finally, Part VII summarizes the relief DuPont requests

[1] DuPont is discussing CSXT's adjustments to the RSAM calculation and its "market-based" adjustments of the comparable traffic group R/VC ratios to 2007 levels under the rubric of "other relevant factors," although CSXT has not identified them as such

I. THIS CASE IS APPROPRIATE FOR DECISION UNDER THE THREE-BENCHMARK APPROACH

CSXT's Opening Evidence is charged with rhetoric and innuendo that has absolutely no bearing upon the Board's resolution of this proceeding, or any of the other two small rate cases DuPont filed pursuant to the Three-Benchmark approach adopted in *Simplified Standards* CSXT's assertions are nothing more than an attempt to put a new spin on arguments that the Board considered and rejected in *Simplified Standards* regarding the proper use of the Three-Benchmark approach

First, CSXT continues to argue that simplified rate standards should apply only to small shippers, not small cases Although CSXT states that it does not seek to prevent any of the three small rate cases filed by DuPont from going forward, CSXT asserts that "they hardly constitute a 'truly small case' for a 'small shipper' " CSXT Op Ev at 3-4 CSXT seems to believe that, because DuPont is one of CSXT's largest customers and ships thousands of carloads in hundreds of traffic lanes annually, DuPont should not be permitted to file a small rate case *Id* at 2 But, as the Board correctly observed in *Simplified Standards*, p 5, note 5, "under the statute eligibility must be based on the value of the case, not the size of the shipper "

CSXT, however, would define the value of this case as the value of the total business DuPont conducts with CSXT, not the value of the case actually presented to the Board Specifically, CSXT argues that "[t]he traffic covered by this Complaint and its two companions are simply small component parts of a far larger dispute between the parties regarding hundreds of lanes of traffic long governed by a complex, integrated Master Contract." CSXT Op Ev. at 3 But if the size of DuPont and its total traffic volume on CSXT are the criteria for determining eligibility to use the Three-Benchmark approach, then DuPont would be deprived of any practical form of relief from unreasonably high rates. The statute does not require an "all or

nothing" approach – a shipper with a number of movements on a carrier may choose to challenge all of them, many of them, or just a few

DuPont would much prefer to enter into a new master contract with CSXT for all of its traffic at reasonable rate levels But a contract is supposed to be the result of negotiations in a competitive market Here, no such market exists CSXT has abused its market dominance over much of the DuPont traffic to demand unreasonably high rates DuPont does not take issue with every single rate that CSXT has established for its traffic But CSXT is offering only a package contract that forces DuPont to pay unreasonable rates on many traffic lanes in order to receive reasonable rates on some CSXT's approach runs counter to the statutory requirement that *each and every* rate charged by a market dominant carrier must be "reasonable " 49 U S C 10701(d) ("If the Board determines that a rail carrier has market dominance over the transportation to which a *particular rate* applies, *the rate established* by such carrier must be reasonable ") DuPont stands ready to negotiate a new master contract with CSXT as soon as CSXT is prepared to offer reasonable rates for DuPont traffic

Under *Simplified Standards*, DuPont is entitled to challenge the reasonableness of individual rates for individual movements, as it has done in the three small rate cases it filed against CSXT DuPont is not required to challenge every single rate that CSXT has published for it Nevertheless, DuPont is mindful of the Board's concern that a shipper not attempt "to divide a large dispute into multiple smaller disputes " *Simplified Standards* at 32 DuPont has not even come close to crossing that line

For all of the rhetoric in its opening evidence, CSXT does not actually accuse DuPont of impermissibly dividing its claims That is because DuPont has not sought to manipulate the Board's proces in its three small rate complaints Each of the seven movements at issue is

sufficiently discrete and has sufficiently low annual volume so as to make a Full Stand-Alone Cost ("Full-SAC") presentation too costly given the value of each case individually or combined In *Simplified Guidelines*, p 32, the Board noted that a Full-SAC case costs approximately $5 million. This estimate is based upon cases involving the presentation of mostly single-commodity stand-alone railroads where the issue traffic moves between a single origin-destination pair. A multi-commodity stand-alone railroad with multiple origins and destinations spread across a wide geographic area could require an even more costly Full-SAC presentation The seven movements of four different commodities in the three DuPont small rate cases are spread across origins and destinations in eight states New York, New Jersey, Michigan, Mississippi, Virginia, West Virginia, North Carolina and Tennessee There is little to no overlap in their routes and the distances involved would require DuPont to create a stand-alone railroad that replicates a very sizeable portion of CSXT's entire rail network Moreover, based upon 2006 traffic volumes for the issue movements, even without the $1 million rate relief cap imposed upon each of the three complaints filed by DuPont, the total relief calculated by DuPont in its Opening Evidence would not exceed the Board's $5 million cost estimate for a Full-SAC case

DuPont has filed only three rate cases, involving a total of seven geographically dispersed movements and four commodities Until DuPont does significantly more than that, CSXT cannot reasonably argue for aggregation Indeed, CSXT has limited itself to empty rhetoric—it has not raised any aggregation objections to the three pending DuPont small rate cases The Board cannot make any aggregation determination based on speculation about cases that have not been, and may never be, filed Accordingly, the Board should disregard CSXT's rhetoric and apply the Three-Benchmark approach in accordance with *Simplified Standards*.

II. CSXT's CHALLENGES TO THE THREE-BENCHMARK METHODOLOGY ARE INCORRECT

At pages 7-13 of its Opening Evidence, CSXT re-ploughs ground that it has trod many times before, in the *Simplified Standards* proceeding, by challenging a number of aspects of the Three-Benchmark methodology itself. Indeed, as noted below, some of CSXT's challenges attempt to unsettle law decided a decade ago.

CSXT's challenges to the Three Benchmark approach are wrong as a matter of policy and law, and were correctly rejected by the Board in *Simplified Standards*. Although CSXT and several other (but not all) rail carriers have appealed the *Simplified Standards* decision to the U.S. Court of Appeals for the District of Columbia Circuit, DuPont asserts that the railroads' challenges to the Three-Benchmark approach are meritless, and will be so found by the Court.

Eligibility Limits. CSXT objects to the Board's decision in *Simplified Standards* to set the eligibility limits in Three-Benchmark cases at $1 million. CSXT argues that the $1 million eligibility limit "subjects far too much traffic" to the Three-Benchmark methodology. But the statutory test for eligibility is not whether "too much traffic" (in the railroad's eyes) is encompassed by the Three-Benchmark procedure. Rather, it is whether the Three Benchmark methodology fulfills the statutory command for a "simplified and expedited" procedure, by effectively enabling a party to challenge the reasonableness of a rail rate in cases where a full stand-alone cost presentation is "too costly, given the value of the case." 49 U.S.C. 10701(d)(3).

In light of that statutory requirement, the $1 million eligibility threshold is clearly *too low*. In establishing that requirement, the Board assumed that a Three-Benchmark case would cost only $250,000 to litigate. The $1 million eligibility limit was chosen to provide a potential complainant with a proper "risk factor." *See, Simplified Standards* at 31-32. But the litigation tactics employed by CSXT in this case – which has involved a CSXT Motion to Dismiss, a

CSXT Motion to Hold in Abeyance, a CSXT Motion for Clarification, and the need for DuPont to file a Motion to Compel – suggests that the Board's estimate of the cost of a Three-Benchmark case may be significantly understated DuPont notes that a number of entities have asked the Board to revise the eligibility limits upward *See*, Petition for Reconsideration filed by Interested Parties on October 12, 2007 in Ex Parte 646 (Sub-No 1), pp 2-12

The Three-Benchmark "Presumption." CSXT objects to the Three-Benchmark "presumption" that an adjusted R/VC ratio derived from a group of comparable movements establishes a maximum reasonable rate CSXT characterizes the Board's *Simplified Standards* decision in this respect as a "mechanical application" of a formula CSXT is wrong The Board's decision in *Simplified Standards* makes clear that, if the challenged rate is above a reasonable confidence interval around the estimate of the mean for the adjusted comparison group, it will be "presumed unreasonable " In such cases, the maximum rate will be prescribed at that boundary level, but only "*absent any 'other relevant factors' " Simplified Standards* at 21 [emphasis added] Thus, the Board 's decision in *Simplified Standards* makes clear that the presumption will apply only where there is no other evidence of reasonableness The Board's decision does not indicate that "other relevant factors" will be considered on something other than an "equal footing" with the evidence on comparability, as CSXT incorrectly charges CSXT Op Ev , p 9 The Board's requirement that "other relevant factors" be quantifiable is a reasonable one, and not challenged by CSXT *See*, *Simplified Standards* at 22

Movement-Specific Adjustments to URCS. CSXT reiterates the railroad industry's oft-expressed objection to the Board's decision to permit no movement-specific adjustments to URCS variable costs. While DuPont strongly believes that the actual variable costs of the issue movements are far *below* the costs produced by URCS, DuPont also believes

that the Board's decision to allow no movement-specific adjustments is particularly appropriate in Three-Benchmark cases CSXT is flatly incorrect in arguing that many movement-specific adjustments "can be made with little litigation expense " CSXT Op Ev at 10 As the Board has found, allowing such adjustments would drive the cost of these cases up to patently unacceptable levels *See, Simplified Standards* at 84

Moreover, CSXT's critique in its Opening Evidence, pp 9-10, makes no mention of the fact that, if movement-specific adjustments were made to the cost of the issue movement, then movement-specific adjustments *also* would have to be made to the cost of the comparable movements, so as not to distort the comparison. But as the Board correctly pointed out in *Simplified Standards*, if the movements were similar, "they would likely get similar adjustments, which could cancel these adjustments out " *Simplified Standards* at 84 [citation omitted].

Product and Geographic Competition. CSXT's objection to the Board's refusal to consider evidence of product and geographic competition attempts to resurrect an issue that was settled a decade ago in *Market Dominance Determinations -Product and Geographic Competition*, 3 S T B 937, 949 (1998), *aff'd Assoc of Amer R R v STB*, 306 F 3d 1008 (D C. Cir 2002) ("*P&G Competition*") The Board concluded that the statute does not require it to consider product and geographic competition, *id* at 946, and that to do so would impose substantial burdens on both the parties and the Board, *id* at 947 Indeed, the Board noted that consideration of product and geographic competition imposes burdens on the Board "that extend the processing of rate cases," *id* , a consequence that is anathema to the statutory requirement of a simplified and expedited method for determining the reasonableness of challenged rail rates 49 U S C § 10701(d)(3).

The Board also expressed concern that consideration of product and geographic competition requires it "to address complex non-transportation issues , thus significantly complicating and prolonging an analysis of the record," and requiring it "to 'second guess' shipper management" about issues beyond the Board's expertise *P&G Competition*, at 947 The Board expressly cited examples of prior cases in which it was required to determine whether a paper manufacturer could alter its production process to use a different type of wood and whether the end users of aluminum containers could switch to plastic or glass *Id*

The Board also noted that the minimal harm to railroads of excluding evidence of product and geographic competition was outweighed by the harm it would cause to shippers

> When effective product and geographic competition is present but difficult to demonstrate, the carrier will be no worse off if the effectiveness of this competition is determined by a complicated antitrust-type market dominance analysis or confirmed by the rate reasonableness analysis Conversely, if there is not effective competition, then a protracted examination of product and geographic competition, followed by an expensive and time-consuming rate analysis, works to the detriment of all parties Only if the prospect of such an onerous regulatory process deters the filing of a rate complaint would the railroads benefit However, the market dominance requirement should not be used as a litigation weapon, and Congress certainly does not intend for it to be used to chill pursuit of legitimate rate relief as envisioned under the statute

Id, note 60 In addition, the Board noted that, "if there are product and geographic competitive alternatives that are obviously effective, a shipper would be unlikely to pursue a regulatory rate challenge " *Id* at 948

The evidence in this case also is that product and geographic competition has had little to no effect upon CSXT's pricing of DuPont traffic Exhibit A, titled "DuPont Contract Fact Sheet," is an internal CSXT document prepared after the breakdown in contract negotiations with DuPont The last bullet on the third page (CSX-ALLHC-005746) states, [redacted]

[redacted][2]

Finally, tremendous consolidation in the rail industry has rendered product and geographic competition much less effective than it may once have been Since there is effectively a railroad duopoly in the eastern and western halves of the country, the odds are quite high that a potential source of product or geographic competition also is served by the same railroad Moreover, as long as the issue commodity or the substitute commodity must move by rail to or from a point served by the defendant railroad, such product or geographic competition cannot be described as "effective "[3]

Alleged Regulatory Lag. CSXT argues that the Board has failed to adequately address the alleged "inherent bias" caused by using rates from 2002-2005 to judge the reasonableness of a rate in 2007-2008 CSXT is wrong *See infra* at pp 27-29 In *Simplified Standards*, the Board correctly noted that an adjustment to rail costs is not necessary, since, because the Three-Benchmark approach focuses on R/VC ratios where price levels are reflected in both the numerator and denominator, the effect of price shifts associated with inflationary

---

[2] All shaded text is CONFIDENTIAL and HIGHLY CONFIDENTIAL information that has been redacted from the public version of this pleading

[3] For example, [redacted] The fact that DuPont may obtain a lower transportation cost due to the shorter distance is a factor attributable to CSXT's lower cost, not to competition CSXT can charge a lower rate and still earn the same or even a greater R/VC ratio on the alternate movement

increases is largely offset *Simplified Standards* at 85 And, the Board also correctly ruled that a revenue adjustment is not appropriate *Id*

Moreover, it would not be proper to adjust the maximum rate to account for an alleged lag, without *also* recalculating the RSAM and R/VC>180 ratios, to account for the same lag This is because alleged revenue increases by a carrier in any intervening time period would, all other factors being equal, shrink the shortfall to revenue adequacy, thereby decreasing the RSAM The R/VC>180 may increase as well, if the carrier has raised rates on traffic with a revenue to cost ratio of more than 180 percent A decrease in the RSAM (whether or not accompanied by an increase in the R/VC>180) would reduce the "expansion ratio" (the ratio of the RSAM to the R/VC>180), thereby in turn reducing the presumed maximum reasonable rate. CSXT's attempt to "fully reflect[] current market rates" without currently reflecting *all* the factors that go into the maximum reasonable rate calculation, is simply an attempt to "pick and choose" those parts of the process that are – at this moment in time – most favorable to it

Finally, the Board has consistently and correctly determined in prior cases that the use of a four-year average was desirable "given the cyclical nature of railroad traffic," the need to "smooth out annual variations," and to "minimize the impact of any year that may have been aberrational for that carrier "[4] CSXT's methodology has the effect of elevating the importance of the current year's rates in a five-year rate prescription, no matter where the current year is in the rail economic cycle

Sources of Information. Finally, CSXT objects to the Board's ruling that parties to Three-Benchmark cases must base their selection of a comparison group and any advocacy for a

---

[4] *See McCarty Farms v Burlington Northern Inc*, 4 I C C 2d 262 (1988), *rev'd on other grounds, Burlington Northern R R Co v ICC*, 985 F 2d 589 (D C Cir 1993), *South-West R R Car Parts Co v Missouri Pac R R Co*, Docket No 40073, 1988 ICC LEXIS 370, *14 (Dec 1, 1988), *Rate Guidelines—Non-Coal Proceedings*, 1 S I B 1004, 1032-33 (1996)

particular comparison group solely on Waybill Sample data released to the parties or other publicly available information The Board's restriction is an eminently reasonable limitation to prevent Three-Benchmark cases from drowning in discovery, a result that would be contrary to the Congressional requirement for a "simplified and expedited" method for determining the reasonableness of rates when a full stand-alone cost presentation would be too costly, given the value of the case

III. VARIABLE COSTS

In its Opening Evidence, DuPont calculated the variable costs of the issue movements using the Board's Uniform Railroad Costing System ("URCS") Phase III cost program without adjustments, as required by the Board's October 30, 2006 decision in Ex Parte No 657 (Sub-No 1), *Major Issues in Rail Rate Cases* CSXT followed the same procedures with one exception that produces a slight difference from the variable cost calculated by DuPont

The difference is in the loaded miles input to URCS Whereas CSXT used loaded miles from its internal records, DuPont used the loaded miles generated from the PC*Miler|Rail program (version 10), which is from the same database used in the Waybill Sample Crowley Reply V S at 4-5. Because DuPont has followed the procedures mandated by the Board, the Board should use the DuPont variable cost calculation *Simplified Standards* at 84 ("simplified guidelines can only be achieved by adhering strictly to the URCS model to calculate variable costs")

IV. "FINAL OFFER" COMPARISON GROUP

Although DuPont and CSXT have agreed upon several relevant factors in selecting their initial comparison groups, there are several fundamental differences The common factors applied by both parties are tank car movements, private car ownership, CSXT originated and terminated movements;[5] hazardous materials STCC "49," and movements with an R/VC > 180 After carefully considering the other factors applied by CSXT, DuPont believes that, with two exceptions noted in this Reply Evidence below, its initial comparison group is the "most similar in the aggregate to the issue movements " *Simplified Standards* at 18

In addition, there are three other comparison criteria applied by CSXT with which DuPont disagrees, but which DuPont does not contest in this case because they have no impact upon the DuPont "final offer" comparison group Those criteria are CSXT's decision to exclude movements that were originated or terminated by a short-line or switching carrier, even though they are reported in the Waybill Sample as "CSXT Local" movements, CSXT's exclusion of multiple car and unit train movements, and CSXT's exclusion of movements that originate or terminate in Canada

DuPont witness Crowley compares the initial comparison groups of DuPont and CSXT for the issue movement *See* Crowley Reply V S at 9-10 and Ex TDC-8 He then reviews and critiques each of the criteria applied by CSXT to select its initial comparison group *Id* at 10-16. Finally, Mr Crowley explains the modifications that DuPont has made to its "final offer" comparison group and presents that group in Exhibit TDC-11 *Id* at 16-17

As discussed in detail below, the DuPont "final offer" comparison group for the issue movement consists of the following

---

[5] Although CSXT claims to have applied this criteria, DuPont witness Crowley has identified some movements in CSXT's initial comparison group that slipped through this filter Crowley Reply V S at 14

1 The DuPont initial comparison group,

2 less the issue movements, as identified by CSXT,

3 plus all movements in CSXT's initial comparison group, *i e* commodities included in CSXT public tariff CSXT-28151, that otherwise satisfy all of the other criteria for inclusion in the DuPont initial comparison group

A. CSXT Factors Accepted by DuPont

In its "final offer" comparison group, DuPont has accepted two factors applied by CSXT These factors concern the identification of comparable commodities and the identification of issue traffic

1. DuPont has added to its "final offer" comparison group movements of commodities in CSXT-28151 included in CSXT's initial comparison group that also satisfy the other DuPont selection criteria

In its Opening Evidence, DuPont included only hazard class 6.1 commodities in its initial comparison group, except those that are classified as a TIH CSXT selected all commodities identified in its tariff CSXT-28151, which covers Hazmat Cyclic Intermediates that fall into STCC categories 28151 and 28152, and Acetone According to CSXT, it "groups these commodities in the same tariff because they are all chemicals that are hazardous, that are most commonly used as intermediates and inputs for other processes, and that have similar transportation characteristics " CSXT Op Ev at 18 Upon reflection, DuPont agrees with CSXT's decision to compare the issue movement of nitrobenzene with movements of the other commodities in CSXT-28151, except that DuPont continues to exclude any such commodities that also are classified as a TIH Therefore, DuPont has included movements of commodities in CSXT-28151 (except TIH commodities) included in CSXT's initial comparison group that also satisfy all of the other criteria for inclusion in the DuPont initial comparison group Crowley Reply V S at 11

2. DuPont has accepted CSXT's identification of issue movements and excluded them from its "final offer" comparison group

Although both DuPont and CSXT excluded the issue traffic from their initial comparison groups, they employed different methods to identify the issue traffic from the Waybill Sample CSXT identified traffic as "issue traffic" based on origin, destination and STCC code. DuPont identified "issue traffic" as movements in DuPont (DUPX) cars Upon review of CSXT's evidence, DuPont accepts CSXT's identification of the issue movements and has omitted these movements from its comparison group. Crowley Reply V S at 11

B. CSXT Factors Rejected by DuPont

1. DuPont has adopted far more reasonable distance parameters than CSXT

Although CSXT and DuPont both applied a distance criteria in their initial selection of comparable movements, DuPont has applied a far more reasonable standard to identify movements most similar in the aggregate to the issue movements DuPont rounded the issue movement mileage to the nearest 50 miles and selected movements that fell within a range of 150 miles on either side of that number Crowley Reply V.S. at 14 In contrast, CSXT included every movement with a distance greater than 200 miles

CSXT's much broader mileage range includes many movements that clearly are not comparable to the issue movements For example, although the issue movement travels 816 7 loaded miles, CSXT includes movements as short as 202 miles, or less than 25% of this distance, and as long as 1130 miles *Id* at 15

CSXT's assertion that "the most significant effects of length of movement on variable costs and revenues are found in the difference between relatively short hauls, on the one hand, and medium and longer distance movements, on the other hand," CSXT Op Ev at 15, is unsupported by the facts DuPont witness Crowley illustrates the impact of distance upon costs

in his Verified Statement at Ex TDC-10, which plots the variable cost per ton-mile in 50-mile increments for a common comparable movement selected by both CSXT and DuPont Crowley Reply V.S at 15-16 By extending its mileage boundary around the issue movement by several hundred miles beyond those chosen by DuPont, CSXT has included a much greater variation in the costs of providing service *Id*

At 200 miles, the cost curve is still very steep For example, a 1¢ drop in the cost per ton-mile occurs between 200 and 350 miles, a span of only 150 miles But the next 1¢ drop in the cost per ton-mile occurs between 350 and approximately 1350 miles, a span of 1000 miles The much narrower DuPont mileage range for selecting comparable movements is on this relatively flat part of the cost curve. For example, Exhibit TDC-15 shows that CSXT's variable cost range is from $0 03938 to $0 02177 per ton-mile, whereas the DuPont range is from $0 02462 to $0 02255 per ton-mile *Id* at 15-16 This shows that, holding all other factors constant, shorter haul movements will have higher rates (measured on a mills per ton-mile basis) than longer haul movements *Id* at 16

There also does not appear to be much correlation between revenues and distance at 200 miles Witness Crowley has prepared a chart that compares all the movements in the DuPont and CSXT initial comparison groups. Crowley Reply V.S. at 9, Ex TDC-8 This chart identifies all the movements included in each party's initial comparison group, color codes the common movements in both party's comparison groups, and categorizes the reasons why each party has excluded the remaining movements of the other party from their comparison group According to this chart, if CSXT were to increase its mileage threshold by just 50 miles, from 200 miles to 250 miles, 35 movements with R/VC ratios greater than 400% would be eliminated contrasted with only 11 movements with R/VC ratios below 400%, or in other words, three times as many

movements This fact seriously undermines CSXT's claim that all traffic that moves over 200 miles is comparable based upon length of haul

By including only movements that are 150 miles longer or shorter than the issue movement, DuPont has identified traffic that is far more similar in distance to the issue movement than CSXT has identified Therefore, DuPont continues to adhere to the distance criteria in its opening evidence

2. CSXT has inappropriately excluded movements on the unsupported assumption fuel costs were not recovered

CSXT has excluded all movements with no charges in the "Miscellaneous Charges" field of the Waybill Sample on the unsupported assumption that this indicates that fuel costs were not recovered. DuPont believes that this is an inappropriate exclusion of otherwise comparable movements for several different reasons

First, the absence of a value in the "Miscellaneous Charges" field does not necessarily mean that CSX T did not receive a fuel adjustment on that movement CSXT has not presented any evidence that it reports fuel surcharges in this field or that fuel surcharges are the only monies recorded in this field Crowley Reply V.S. at 12

Second, fuel costs can be accounted for in different ways But, CSXT creates the impression that it was not compensated for increasing fuel prices if there is no value in the "Miscellaneous Charges" field of the Waybill Sample For example, because tariff rates can be increased on 20 days notice, changing fuel costs can be captured in the line-haul rate without a fuel surcharge In addition, many rates are adjusted by the Rail Cost Adjustment Factor, or some variation, that includes changes in fuel costs *Id* at 13 Exhibit TDC-9 shows that the fuel component of the RCAF increased at a faster rate than EIA's U S No 2 Diesel price from 1Q02

to 1Q08 Thus, even if there was no separate fuel surcharge, a rate adjustment mechanism, such as the RCAF, would have captured the increase in CSXT's fuel costs *Id* at 13

Third, even if CSXT did not assess a fuel surcharge on a particular movement, that was a market-based decision by CSXT, and thus is properly included in the comparison group The same would be true of any other market-based decision and CSXT has not offered any rationale for treating fuel differently

Fourth, CSXT claims that traffic without a fuel surcharge from 2002-2005 was under-recovering fuel costs relative to other traffic However, by CSXT's own admission, during that period it was *over*-recovering fuel costs on traffic subject to a fuel surcharge based upon a methodology that the Board subsequently declared to be an unreasonable practice. *Rail Fuel Surcharges*, STB Ex Parte No 661, (served Jan 26, 2007) As noted in that Board decision, CSXT admitted that "its fuel surcharge program 'is designed to recoup CSXT's increased overall fuel expenses to ensure adequate revenues.'" *Id* at 6, *quoting* CSXT Comment at 18 [emphasis added] But the Board rejected CSXT's rationale, stating

> the fact that a railroad may not be able to recover its increased fuel costs from some of its traffic...does not provide a reasonable basis for shifting those costs onto other traffic in this manner. We believe that imposing rate increases in this manner, when there is no real correlation between the rate increase and the increase in fuel costs for that particular movement to which the surcharge is applied, is a misleading and ultimately unreasonable practice

Id at 7 Thus, by CSXT's own admission, traffic assessed a fuel surcharge from 2002-2005 was overcharged for changes in the cost of fuel to account for traffic that did not pay a fuel surcharge Since it is not practical to exclude both types of traffic from a comparison group, a fair and reasonable response is to include both types of traffic, allowing the conceded over-recovery of fuel on the one type of movement to offset the alleged under-recovery on the other The average

R/VC ratio of this comparison group then should be similar to what it would have been if fuel were properly accounted for in both types of movements

C. The DuPont "Final Offer" Comparison Group Has a Comparable Range of Density to the Issue Movement

Neither DuPont nor CSXT included density as a factor in the selection of their initial comparison groups due to the uncertainty of whether they could use the density maps produced by CSXT in discovery Now that the Board has clarified that the parties may use that data, DuPont has conducted a density analysis of the movements contained in its "final offer" comparison group DuPont witness Crowley has calculated the weighted average density for the issue movement and for each movement in the "final offer" comparison group and presented the results in Exhibit TDC-11 Crowley Reply V S. at 18-19 This analysis demonstrates that the DuPont "final offer" comparison group is comparable in density with each of the issue movements

As shown in Ex TDC-11, the weighted average density of the issue movement is 35.4 million gross tons per mile ("MGT/mile") The comparison group movements have a range of weighted average density from 33 6 to 91 2 MGT/mile Because the movements at the high and low ends of this range are from CSXT's initial comparison group, the DuPont "final offer" comparison group has at least the same range of density as CSXT's group

The above density range reflects comparable movements based upon density thresholds used by the Board When evaluating track and traffic conditions in Annual Report Form R-1, Schedule 720, the Board requires each Class I railroad to group these characteristics by density category Track category A (the most densely traveled rail lines) groups together all lines with 20 MGT/mile or higher Crowley Reply V S at 19 Additionally, in Schedule 416, the Board also requires that Class I railroads calculate road property depreciation rates by the same density

category *Id* Each DuPont comparable movement falls within the highest density category used by the Board *Id*

V. "OTHER RELEVANT FACTORS"

CSXT has made two adjustments to the maximum R/VC ratios produced by applying the Board's formula to CSXT's initial comparison group One adjustment is to correct an alleged error in the Board's RSAM calculation and the other is to adjust the R/VC ratios of the comparable traffic to 2007 "market" levels. Although CSXT does not consider these adjustments to be "other relevant factors," it concedes that its evidence might be considered under that label CSXT Op. Ev at 31 Because DuPont agrees with CSXT's statement that the quantified effects of its adjustments would be the same regardless of when in the process they are applied, *id*, the issue of whether or not these adjustments constitute "other relevant factors" is moot For the purpose of responding to CSXT, however, DuPont is addressing both adjustments as "other relevant factors "

A. The Board Should Reject CSXT's RSAM Adjustment

CSXT has identified an alleged "flaw" in the Board's RSAM calculation that it attempts to correct Specifically, CSXT claims that, because the RSAM revenue shortfall is calculated after all taxes have been paid, the revenues needed to make up that shortfall also must be calculated after taxes in order for CSXT to achieve revenue adequacy CSXT Op Ev at 19-21 DuPont witness Crowley identifies two fundamental problems with CSXT's adjustment First, CSXT erroneously applies its statutory tax rate to adjust the revenue shortfall for taxes Crowley Reply V S at 24-25 Second, because the variable costs used to calculate the RSAM and R/VC>180 ratios include an over recovery of income taxes, they in fact understate the size of the R/VC >180 traffic and artificially increase the revenue adequacy adjustment factor. *Id* at 26-27 Finally, this case is an improper proceeding to make changes to the RSAM calculation

1. **CSXT does not pay the statutory tax rate**

CSXT's adjustment of the RSAM for taxes wrongly assumes that CSXT pays the statutory tax rate, when its effective tax rate is much lower This error causes a substantial and unjustified increase in the expansion ratio (the factor resulting from dividing the RSAM by the R/VC >180) from 1 24 to 1.38 CSXT Op Ev at 21 Thus, CSXT has vastly overstated the impact of the alleged flaw

The effective tax rate is the amount of tax paid when all other government tax offsets or payments are applied, divided by the tax base Factors such as deferred income taxes, tax-loss carry-forwards and carry-backs, and governmental tax credits can drive the effective tax rate well below the statutory rate Crowley Reply V S at 24 CSXT is no exception DuPont witness Crowley shows that CSXT's effective tax rates were well below its statutory rates from 2002 through 2005 *Id*

Ideally, the proper tax rate to apply is neither the effective nor the statutory rate, but CSXT's marginal tax rate, which is likely to be somewhere between the effective and statutory rates However, the Board would need a complete set of CSXT's income tax returns from 2002 through 2005 to determine CSXT's marginal tax rate for that time period *Id* at 25. Since CSXT, which is the sole source of that information, has chosen not to place it in evidence, the Board should apply CSXT's effective tax rate, if it elects to make any adjustment at all Since all taxpayers strive to minimize their tax liability, it also is reasonable to presume that CSXT's marginal tax rate is much closer to its effective than its statutory tax rate

The selection of the tax rate has a substantial impact upon the Board's expansion ratio of 1 24 for CSXT without any adjustments Whereas the statutory tax rate produces a sizeable increase in the expansion ratio up to 1 38, CSXT's effective tax rate would increase the expansion ratio only modestly to 1 26 *Id*, Ex TDC-12 Although DuPont does not believe that

any adjustment is necessary or appropriate for the reasons given in the next two sections, if the Board decides to make any adjustment, it should rely upon CSXT's effective tax rate, not its statutory tax rate

2. URCS overstates the necessary recovery of taxes to achieve revenue adequacy

DuPont believes that no adjustment to RSAM is necessary because URCS overstates the tax component in variable costs by using the statutory tax rate. URCS includes a variable return on investment ("ROI") component calculated using a pre-tax weighted-average cost of capital ("WACC") based on the federal statutory tax rate of 35 percent, which explicitly adds variable costs to each movement to cover the railroad's hypothetical tax burden Crowley Reply V S at 26 However, as explained above, actual tax expenses are much lower than the statutory rate due to offsets and credits

For example, as demonstrated in the preceding section, CSXT's effective tax rate is much lower than its statutory tax rate Taking 2005 as an example, Mr Crowley shows that CSXT booked $220 million in federal taxes, but URCS implicitly included $748 million to cover taxes inherent in the variable return on investment calculation *Id*, Ex TDC-13 In other words, URCS included taxes that were more than three times CSXT's actual income tax expense

This impacts the RSAM revenue adequacy adjustment factor because the Board uses URCS variable costs, along with revenue statistics, to identify movements to include in the R/VC>180 sample group and the resulting Revenue >180 calculation By overstating variable costs, URCS effectively excludes movements from the R/VC>180 sample group, which lowers the Revenue>180 figure Correcting the URCS variable costs for this tax recovery overstatement, by using CSXT's effective tax rate, would increase the number of movements in

the R/VC>180 sample group, and thereby increase the total Revenue>180 *Id* at 26-27. This would produce a more accurate revenue adequacy adjustment factor

3. This proceeding is an inappropriate forum to change the RSAM

The Board revised the RSAM in *Simplified Standards*, after an extensive period for public notice and comment. During four rounds of comments and a public hearing, neither CSXT nor any other party identified the alleged flaw that CSXT urges the Board to correct in this proceeding It would be inappropriate for the Board to use this proceeding between just CSXT and DuPont to change the RSAM methodology that was thoroughly vetted in a notice and comment rulemaking proceeding

As DuPont has demonstrated above, there are a multitude of countervailing factors that must be considered before declaring the existence of a flaw in the RSAM methodology and precisely how to fix such a flaw DuPont believes there is no flaw, because there is in fact no under-recovery of actual taxes If anything, DuPont believes there is an overstatement of taxes, and the resulting revenue shortfall Moreover, even if there is a flaw, the fix is to use the effective, not the statutory, tax rate The Board, however, should not determine the existence of a flaw within the narrow confines of this proceeding. Rather, the Board should apply the RSAM that it adopted after extensive public notice and comment and direct CSXT to raise the alleged flaw in a petition to reopen *Simplified Standards*

B. CSXT's "Market" Adjustment Is Neither Necessary Nor Appropriate

CSXT alleges that the cost and revenue data associated with movements from the 2002-2005 Waybill Samples "does not provide a comparable basis for evaluating the R/VC ratios of the challenged rates, which were established in mid-2007 " CSXT Op Ev at 21-22 Therefore, CSXT attempts to adjust the revenues and costs of every comparable movement to 2007 levels in order to "account for the significant market changes and dynamics and railroad

cost inflation for the shipment of chemicals traffic that have occurred throughout the last five-plus years " *Id* at 22 These adjustments are neither necessary nor appropriate

CSXT's "market" adjustment to the maximum R/VC ratios of the comparable movements should be rejected for three reasons First, it undermines a fundamental objective of the Three Benchmark approach to smooth out the impact of market fluctuations over time when comparing the R/VC ratios of the issue traffic with a comparison group Second, CSXT has not presented its evidence objectively as required by *Simplified Standards* Third, CSXT has not demonstrated that the adjustments are necessary to reflect changes in the market

1. CSXT's "market" adjustment undermines a fundamental objective of the Three Benchmark approach

CSXT's fundamental error lies in its assumption that the Board should evaluate rate reasonableness based upon a static period in time, i.e , a specific calendar year But from the very earliest permutations of the Three Benchmark methodology, the Board has strived to follow a multi-year approach that smooths out market fluctuations over time

In *McCarty Farms v Burlington Northern Inc* , 4 I C C 2d 262 (1988), *rev'd on other grounds, Burlington Northern R R Co v ICC*, 985 F 2d 589 (D C Cir 1993),[6] the ICC reversed an earlier decision that made tentative findings based upon comparable traffic from only a single year of waybill data

> We agree that one year of data should not be used to establish a standard which will have application to movements of traffic for many years The risk that data for any one year could be non-representative of the long-term trend outweighs any benefit, in

[6] As a result of the *McCarty Farms* remand, the ICC abandoned R/VC comp as the *sole* determinant of reasonableness, but proposed to continue using it in combination with RSAM and R/VC > 180 in Ex Parte No 347 (Sub No 2), *Rate Guidelines—Non-Coal Proceedings*, 1995 ICC LEXIS 301, *11, *23-24 (served Dec 1995) Even after the court remand in *McCarty Farms*, the ICC cited to that decision as the example of how to apply the R/VC comp benchmark as part of the newly-proposed three benchmark approach *Id* at *30-31, n 32 Thus, *McCarty Farms* clearly remained a viable precedent for that purpose both then and now

> terms of simplicity in developing a rate reasonableness standard, to be derived from the use of a single year of data

Id at 277. For the purpose of prescribing future rates, the ICC declared

> We believe that the best approach to establishing a standard that can be used to determine the reasonableness of rates for any year, including periods when data are not available, is to use an average of several years' of data. Evaluation of R/VC ratios over several years tends to balance out cyclical fluctuations and provide a better estimate of maximum reasonableness from a long run perspective

Id *See also South-West R R Car Parts Co v Missouri Pac R R Co*, Docket No 40073, 1988 ICC LEXIS 370, *14 (Dec. 1, 1988) (The ICC combined 5 years of data "to smooth out cyclical fluctuations ")

This precedent refutes CSXT's assertion that the cost and revenue data associated with movements from the 2002-2005 Waybill Samples "does not provide a comparable basis for evaluating the R/VC ratios of the challenged rates, which were established in mid-2007. " CSXT Op Ev at 21-22 Precisely because of changes and fluctuations in market conditions over time, the ICC concluded that a multi-year average of comparable rates was necessary to make the best determination of a maximum reasonable rate over the long run Because any rate prescription will be for a 5 year period, it is important to prescribe a rate that is based neither upon the peak nor the trough of the business cycle.

When the ICC formally proposed the three benchmark approach in Ex Parte No 347 (Sub-No 2), *Rate Guidelines—Non-Coal Proceedings*, 1995 ICC LEXIS 301 (Nov 22, 1995), it added the RSAM and R/VC > 180 benchmarks in response to criticism of using the R/VC comp benchmark alone Consistent with its decisions in *McCarty Farms* and *South-West Car Parts* to draw comparable traffic from multiple years of waybill data, the ICC decided to use a 4-year average of the RSAM and R/VC >180 benchmarks "so as to smooth out annual variations and

minimize the impact of any year that may have been aberrational for that carrier." *Rate Guidelines—Non-Coal Proceedings*, 1 S T B 1004, 1032-33 (1996)

CSXT's market adjustment would undermine the Board's carefully considered decision to use a 4-year average of all three benchmarks, by attempting to mark-up the R/VC ratios of the comparable traffic to market conditions in a single year. The rationale given by the Board in its earlier decisions – to use a 4-year average of the RSAM, the R/VC>180 *and* the R/VC comp figures in order to prevent the possibility that data from any one year could be "non-representative," to "balance out cyclical fluctuations and provide a better estimate of maximum reasonableness from a long run perspective" and to "smooth out cyclical fluctuations" and "aberrations" – is just as valid now as it was then. CSXT notes that it has experienced increased demand for rail services in recent years Yet, traffic data for 2007 shows that total volume for all Class I railroads was down for the year 2.3 percent, and that CSXT volumes are down even more, declining 3 4% for the year compared to 2006 (*see* Exhibit B) Moreover, there is widespread concern that the U S economy is heading into a recession, which could put further downward pressure on prices Thus, CSXT's so-called "market" adjustment to 2007 R/VC levels could have the effect of "locking in" rates at their very peak for the next 5 years

2. <u>CSXT's "market" adjustments are not objective</u>

In *Simplified Standards*, p. 77, the Board required a party introducing evidence of "other relevant factors" to provide the Board with "an objective, transparent means of adjusting the maximum lawful rate upwards or downwards" The burden is upon the party requesting the adjustment By ostensibly indexing <u>only</u> the revenues and variable costs of the comparable

group movements to 2007 levels, CSXT has hardly presented an objective means of adjusting the maximum lawful rate [7]

CSXT's adjustment to the revenues and variable costs of only the comparable group creates a mismatch among the three benchmarks Crowley Reply V S at 29 Although the Three-Benchmark approach relies upon historic variable costs and revenues to calculate all three benchmarks, CSXT fails to account for the impact of its indexing upon the RSAM and R/VC>180 benchmarks What we are left with after CSXT's indexing are comparison movement R/VC ratios that nominally have been indexed to 2007 price levels, and RSAM and Revenue >180 ratios based on averages of 2002 to 2005 historic rates and costs *Id* Consequently, while CSXT purports to adjust the comparison group R/VC ratios to 2007 levels, it still applies the "expansion ratio" (the factor resulting from dividing the RSAM by the R/VC >180) based upon an average of the actual 2002-2005 cost and revenue data, even though higher R/VC ratios indexed to 2007 levels would produce a lower expansion ratio that would require an offsetting reduction to the maximum R/VC ratios for the issue movements This comparison of apples and oranges would allow CSXT to apply a much higher R/VC ratio to DuPont than would be proper Because CSXT has made adjustments that only benefit itself, without considering the countervailing effects of applying its adjustments consistently to all three benchmarks, these adjustments can hardly be considered an objective and transparent approach

Furthermore, the inevitable offsetting effect is one of the reasons the Board rejected as unnecessary and inappropriate a nearly identical proposal by BNSF to address the same regulatory lag concerns expressed by CSXT *Simplified Standards*, pp 84-85 "Because the

---

[7] Although CSXT claims that its "market" adjustment is not an "other relevant factor," that clearly is not the case *See Simplified Standards*, p 85 (In order to account for regulatory lag, "parties may present (as 'other relevant factors') evidence that the presumed maximum lawful rate should be higher, or lower, due to market changes not reflected in the comparison group or the average RSAM and R/VC >180 benchmarks ")

Three Benchmark approach focuses on R/VC ratios (where price levels are reflected both in the numerator and denominator)," the Board concluded that "the effects of price shifts associated with an inflationary increase in costs should be largely offset, leaving the R/VC ratios unaffected." *Id* at 85 Nor did the Board believe that a revenue adjustment was appropriate, because the RSAM – R/VC >180 ratio also would change, potentially creating an offsetting effect to any rate increases or decreases attributable to regulatory lag *Id*

3. CSXT has not demonstrated that its "market" adjustment is necessary to reflect changes in the market

Although the Board rejected adjustments to rail costs and revenues as unnecessary and inappropriate, *Simplified Standards* at 85, it nevertheless recognized at least the potential for a regulatory lag effect, and thus permitted the parties to "present (as 'other relevant factors') evidence that the presumed maximum lawful rate should be higher, or lower, *due to market changes not reflected in the comparison group or the average RSAM and R/VC >180 benchmarks* " [emphasis added] CSXT, however, has proposed the same methodology previously rejected by the Board precisely because the changes that methodology sought to account for already were reflected in the three benchmarks CSXT has not demonstrated any other market changes that are not reflected in the three benchmarks

Although CSXT shows that total revenues for the chemical group as a whole have increased from 2002 to 2007, it has not demonstrated the cause of those increases or whether the increased revenues are attributable to all, or just a portion, of chemical traffic CSXT's reliance upon public data on changes in revenues per unit for general chemical traffic falls far short of the transparency required by the Board to demonstrate "other relevant factors " Crowley Reply V S at 31

Both of CSXT's proposed indexing methods rely upon changes in revenues for an entire business group rather than for the specific commodity or movements at issue There is no evidence that CSXT's chemical business as a whole reflects changes in the comparable group For example, CSXT's website lists 29 major chemical groups within its chemical group business, with multiple sub-categories within each macro group *Id* at 32 Although CSXT may categorize all these commodities as chemicals, the actual products are not nearly as homogenous They cover a wide range of commodities, including sand, plastics, petroleum coke, LPG and soda ash, that have absolutely nothing in common other than being included in CSXT's chemical business group *Id* In addition, CSXT's chemical business group includes TIH hazardous materials, non-TIH hazardous materials, and non-hazardous materials If these commodities were as homogenous as CSXT treats them in its analysis, they would have to be considered as similar commodities for the purpose of identifying comparable traffic, which neither CSXT nor DuPont has advocated in this case

CSXT also has not shown that its revenue increases are due entirely to market changes Although market changes may account for some of CSXT's increased revenue, a primary driver in higher 2007 chemical business revenues clearly has been increases in assessed fuel surcharges *Id* at 33 It is not possible to determine from the evidence submitted by CSXT what portion of its increased revenues in 2007 are driven by market changes that are not already reflected in the three benchmarks and other factors such as fuel surcharge revenue that is independent of the chemical transportation market *Id* at 33-34

VI. CALCULATION OF MAXIMUM R/VC RATIOS

DuPont has calculated the maximum R/VC ratio for the issue movement in three ways First, DuPont has applied the formula in *Simplified Standards* to "final offer" comparison group Second, Dupont has adjusted the result of the Board's formula, as described in its opening

evidence, to account for the "Long-Cannon" factors in the statute 49 U.S C. 10701(d)(2)(A)-(C) Third, DuPont has recalculated the RSAM and R/VC >180 benchmarks, as described in its opening evidence, to apply the Board's most current and accurate methodology for calculating the cost of capital DuPont has summarized these results in the chart below

Maximum R/VC Ratio Based Upon DuPont "Final Offer" Comparison Group	
Maximum R/VC Ratio Based Upon *Simplified Standards* without "other relevant factors"[8]	319%
Maximum R/VC Ratio Based Upon RSAM with efficiency adjustment[9]	299%
Maximum R/VC Ratio Based Upon New Cost of Capital Methodology[10]	297%

VII. CONCLUSION

DuPont respectfully requests the Board to

(1) find that the CSXT's common carrier rates applicable to the transportation of the commodity between the origin and destination named in the Complaint are unreasonable,

(2) prescribe just and reasonable rates for the future applicable to the rail transportation of DuPont traffic, pursuant to 49 U S C §§ 10704(a)(1) and 11701(a), and,

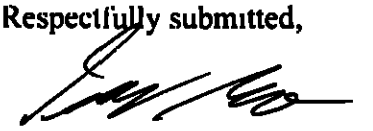
(3) award DuPont reparations, plus applicable interest, in accordance with 49 U S C § 11704 for unlawful rates set by CSXT for the period beginning June 16, 2007 to the effective date of a decision by the Board prescribing just and reasonable rates

[8] Crowley Reply V S at 21, Table 4

[9] Crowley Reply V S at 36, Table 5

[10] Crowley Reply V S at 38, Table 6

Respectfully submitted,



Nicholas J DiMichael
Jeffrey O Moreno
Karyn A Booth
Eric W Heyer
Thompson Hine LLP
1920 N St N W , Suite 800
Washington, D C 20036

Attorneys for E I du Pont de Nemours and Company

March 5, 2008

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

E I DUPONT DE NEMOURS AND COMPANY	)	
Complainant,	)	
v	)	Docket No NOR 42101
CSX TRANSPORTATION, INC ,	)	
Defendant	)	

PART II – REPLY VERIFIED STATEMENTS

1) Reply Verified Statement of Thomas D Crowley, President, L E Peabody and Associates, Inc , Alexandria, Virginia

BEFORE THE
SURFACE TRANSPORTATION BOARD

E. I. duPont de Nemours and Company	)	
	)	
Complainant	)	
	)	
	)	
v.	)	**Docket No. NOR 42101**
	)	
	)	
CSX Transportation, Inc.	)	
	)	
Defendant	)	

Reply
Verified Statement

of

Thomas D Crowley
President
L E Peabody & Associates, Inc

Due Date. March 5 2008

PUBLIC VERSION

TABLE OF CONTENTS PAGE

LIST OF EXHIBITS

I. INTRODUCTION

My name is Thomas D Crowley I am the same Thomas D Crowley who filed a verified statement in this proceeding on February 4, 2008 ("Opening VS") on behalf of E I duPont de Nemours and Company (DuPont ") My qualifications and experience are attached to my Opening VS as Exhibit_(TDC-1)

DuPont is requesting that the Surface Transportation Board ("STB") prescribe reasonable rates, service terms and reparations associated with the transportation of Nitrobenzene (a hazardous commodity) via CSX Transportation, Inc ("CSXT") from Pascagoula, MS to Neuse, NC (Pascagoula Movement)

In my Opening VS. I applied the STB's procedures for the Three-Benchmark Methodology specified in the STB s September 5 2007 decision in Ex Parte No 646 (Sub-No 1) *Simplified Standards for Rail Rate Cases* ("Simplified Standards") and provided the following information in support of DuPont s request

1 The revenue / variable cost ("R/VC") ratio for the issue movement,

2 The selection of comparable CSXT movements from the STB's Unmasked Confidential Waybill Sample ("Waybill Sample") for CSXT for each year 2002 through 2005,

3 The upper boundary of the R/VC ratio for the comparable group (referred to as the Maximum R/VC Ratio") for the issue movement following the STB s procedures specified in Simplified Standards,

4 The identification and quantification of other relevant factors, and

5 The relief to which DuPont is entitled for the issue movement

Simultaneous with the filing of DuPont's Opening evidence on February 4, 2008, CSXT filed its Opening evidence in this proceeding. In this Reply statement, I critique and respond to CSXT's Opening evidence and incorporate some revisions to the analyses included in my Opening VS.

My Reply verified statement ("Reply VS") summarizes the analyses I have performed and my results are summarized under the following headings and in the accompanying Exhibits:

II. Revenue/Variable Cost Ratio for the Issue Movement

III. DuPont's Final Maximum Revenue/Variable Cost Ratio for the Issue Movement

IV. Other Relevant Factors

V. Relief for DuPont

II. REVENUE / VARIABLE COST RATIO FOR THE ISSUE MOVEMENT

The first step in the STB's Three-Benchmark analysis is to calculate the R/VC ratio for the issue movement To develop a R/VC ratio, the rates and variable costs for the movement need to be developed These three components were included in my Opening VS for the issue movement and remain unchanged in this Reply filing CSXT included these same components in its Opening evidence Exhibit_(TDC-7)[1] compares DuPont's and CSXT's calculations of variable costs, rate and R/VC ratio for the issue movement My critique of CSXT's Opening evidence as it relates to the rate variable costs and R/VC ratio for the issue movement is discussed below under the following topics

A Rate for the Issue Movement

B Variable Costs for the Issue Movement

C R/VC Ratio for the Issue Movement

A. RATE FOR THE ISSUE MOVEMENT

Dupont's 3Q07 rate (including the July 2007 fuel surcharge) for the issue movement equals $7.143 18 per car CSXT agrees with DuPont's rate calculation for the issue movement [2]

---

[1] Exhibit_(TDC-1) through Exhibit (TDC-6) were included with my Opening VS

[2] CSXT's electronic workpapers show two different rate calculations for the issue movement One rate calculation uses DuPont's miles to calculate the fuel surcharge for the issue movement and that calculation agrees with DuPont's rate calculation The other rate calculation uses CSXT's miles to calculate the fuel surcharge for the issue movement and this creates a minor difference in the rates as shown on Exhibit_(TDC-7) As discussed in the next section the use of CSXT's miles for costing the issue movement is improper

B. VARIABLE COST FOR THE ISSUE MOVEMENT

In the STB's October 30, 2006 decision in Ex Parte No 657 (Sub-No 1) *Major Issues in Rail Rate Cases* ("Major Issues"), the STB revised the variable cost procedures for rate complaints, deciding that variable costs would be calculated using the STB's Uniform Railroad Costing System ("URCS") Phase III cost program without adjustments The STB also identified the nine inputs to calculate unadjusted variable costs for an issue movement In my Opening VS, I followed the STB's procedures *in calculating the issue movement variable costs*

CSXT followed the same procedures in calculating the issue movement variable costs in Opening Table 1 below shows the one input where DuPont and CSXT used different values

Table 1
Differences in URCS Phase III Cost Program Inputs for the Issue Movement

Item	Pascagoula - Neuse
(1)	(2)
1 Loaded Miles	
a DuPont	816 7
b CSXT	829 3
c CSXT over DuPont	12 6

Source Exhibit_(TDC-7)

As shown in Table 1 above, DuPont and CSXT differ on the loaded miles for the issue movement

CSXT s loaded miles for the issue movement are not based on the S I B's procedures CSX I relied on internal data which the STB expressly rejected in Simplified Standards at pages 83-84

DuPont relied on the miles generated from the PC*Miler|Rail program (Version 10) available from AI K Technologies ("ALK") ALK is the contractor used by the S I B to add the movement miles to the Waybill Sample that are used by the STB to calculate variable costs for the movements in the Waybill Sample using the URCS Phase III costing program The miles used by ALK in the Waybill Sample are from the same data base underlying the PC*Miler|Rail program [1] Stated differently, the miles for all the comparable movements taken from the Waybill Sample are based on PC *Miler|Rail and the issue movement miles need to be from the same source

I able 2 below compares the 3Q07 variable costs presented by DuPont and CSX I for the issue movement and shows the difference in variable costs caused by the difference input described above

---

- This can be confirmed by reviewing the miles contained in the Waybill Sample for the issue movement records eliminated by CSXT from the comparable group DuPont used 816 7 miles to develop the variable costs for the Pascagoula Movement As shown on Exhibit_(TDC-8) all six (6) movements marked with a "3" in Column (1) that moved between Pascagoula (FSAC 49311 in Column (4)) and Neuse (FSAC 21330 in Column (6)) are records from the Waybill Sample that CSXT identified as issue movements Each of these movements has 816 7 loaded miles (Column (13)). I e the same miles used by DuPont

Table 2
Comparison of DuPont's and CSXT's Calculation
of URCS Phase III Cost Program Variable Costs Per Car

	Item	Pascagoula - Neuse
	(1)	(2)
1	3Q07 Variable Cost Per Car - DuPont [1]	$1 913 12
2	3Q07 Variable Cost Per Car - CSXT [1]	$1,935 47
3	CSXT over DuPont [1]	$22 35

[1] Exhibit_(JDC-7)

As shown in Table 2 above CSXT overstated its 3Q07 variable costs for the Pascagoula Movement by $22 35 per car

C. R/VC RATIO FOR THE ISSUE MOVEMENT

Table 3 below shows the R/VC ratios for the issue movement as calculated by DuPont and CSXT

Table
Comparison of DuPont and CSXT R/VC Ratios for the Issue Movements

	Item	Pascagoula-Neuse
	(1)	(2)
1	R/VC Ratio - DuPont [1]	373%
2	R/VC Ratio - CSXT [1]	369%

[1] Exhibit (TDC-7)

As shown in Table 3 above, CSXT's R/VC ratio for the Pascagoula Movement is different from that calculated by DuPont because of CSXT's improper calculation of variable costs. Both DuPont and CSXT agree that the R/VC ratio for the issue movement is significantly higher than the STB's jurisdictional threshold of 180%.

III. DUPONT'S FINAL MAXIMUM REVENUE / VARIABLE COST RATIO FOR THE ISSUE MOVEMENT

The STB s decision in Simplified Standards specified the procedures to develop the Maximum R/VC Ratio for the issue movement using the Three Benchmark Methodology In my Opening VS, I presented the results of my initial analyses following the STB procedures I have reviewed CSXT's Opening evidence and based on that review have revised my opening evidence My revised analyses are summarized below under the following topics

A Selection of Comparable Movements

B DuPont s Final Maximum R/VC Ratio for the Issue Movement

A. SELECTION OF COMPARABLE MOVEMENTS

In my Opening VS at pages 8 through 10, I explained how I selected the comparable movements from the STB's Waybill Samples for 2002 through 2005 to develop the comparable group for the issue movement At pages 13 through 19 of its Opening filing, CSX I explained how it selected the comparable group that it applied to the issue movement My discussion of the comparable movement selection process is contained under the following headings

1 Comparison of DuPont's Comparable Group to CSX T s Comparable Group

2 Review of CSXT's Comparable Group

3 DuPont s Final Comparable Group

1. **Comparison of DuPont's *Comparable Group to* CSXT's Comparable Group**

Exhibit_(TDC-8) compares my initial comparable group for the Pascagoula Movement to the initial comparable group presented by CSXT. Exhibit_(TDC-8) is broken into two sections. The first section lists the movements in my Opening VS comparable group ("DuPont Section"). These movements are color-coded to identify whether or not they were included in CSXT's comparable group. Movements shaded in blue were included in CSXT's opening comparable group and must be included in the final comparable group (discussed later in my testimony). Movements shaded in yellow were not included in CSXT's comparable group. For the yellow-shaded movements, I identified one or more of the following reasons as to why that particular movement was not included in CSXT's comparable group based on CSXT's opening description of its selection criteria:

1. The miscellaneous charges were zero, and/or
2. It was identified as an issue movement.

The applicable reason(s) for exclusion from CSXT's comparable group is/are identified by numbers 1 and 2 (corresponding to the above two reasons) which numbers were placed to the left of each yellow-shaded movement on Exhibit_(TDC-8).

The second section of Exhibit_(TDC-8) lists the movements in CSXT's comparable group and compares them to the comparable group I submitted for the Pascagoula Movement ("CSXT Section"). CSXT's movements are color-coded to identify whether or not they were included in my opening comparable group. Movements shaded in blue were included in my opening comparable

group and must be included in the final comparable group [4] Movements shaded in green were not included in my opening comparable group For the green-shaded movements, I identified one or more of the following reasons as to why that particular movement was not included in my opening comparable group

1 The miles for the movement fell outside of the mileage range specified in my opening selection criteria, i e , outside +/- 150 miles of the miles for the issue movement rounded to the nearest 50-mile increment

2 The movement had a rebill code other than zero, and/or

3 The movement was not classified as Hazard Class 6 1

My discussion of the reasons for the differences between CSXT's comparable group and my comparable group is contained in the following section

2. Review of CSXT's Comparable Group

My review and critique of CSXT's comparable group, and how it relates to the comparable group I included in my Opening VS, are included below under the following topics

a Identification of Issue Movements

b Movements Not Classified as Hazard Class 6 1

c Miscellaneous Charges

d Rebill Code

e Length of Haul

[4] These are the same movements shaded in blue in the DuPont Section of Exhibit_(TDC-8)

a. Identification of Issue Movements

Simplified Standards requires that issue movements be excluded from the comparable group In my Opening VS I identified issue movements in the Waybill Sample as any movement from the issue movement origin to the issue movement destination with the issue movement STCC and traveling in a DUPX car These movements were excluded from my comparable group

In CSXT's opening CSXT identified issue movements in the Waybill Sample, and excluded them from the comparable group using the same criteria I did with the one exception CSXT excluded more than movements in DUPX cars

I agree with the issue movements that were identified by CSXT and have excluded them from my final comparable group [5]

b. Movements Not Classified as Hazard Class 6.1

As stated in my Opening VS at page 8, one of the selection criteria was that the movement had to be a commodity classified as Hazard Class 6 1 (excluding TIH) In CSXT's Opening, CSXT included all commodities listed in CSXT Tariff 28151 As all of the commodities in my Opening VS comparable group are listed in CSXT Tariff 28151. I have accepted CSX I 's criteria for STCC In Reply, I have added eight movements from CSXT's comparable group that are not Hazard Class 6 1. but that meet all the other selection criteria specified in my Opening VS. to my final comparable group for the issue movement [6]

---

[5] DuPont comparable movements that were identified as issue movements by CSX I are identified with a "2" in the DuPont Section of Exhibit_(TDC-8)

[6] CSXT comparable movements that I added are identified with only a '3' in the CSXT Section of Exhibit_(TDC-8)

c. **Miscellaneous Charges**

Miscellaneous Charges is a field in the Waybill Sample that is separate from the freight revenue field. In calculating the RSAM and R/VC $_{full}$ ratios, the STB calculates the revenue for each movement in the Waybill Sample by adding miscellaneous charges to the freight revenue. In calculating the R/VC ratio for the movements in each comparable group, I followed the same procedure.

CSXT also followed this procedure for the comparable movements it selected. However, CSXT used Miscellaneous Charges as a comparable movement selection criteria. Specifically, in Opening at page 16, CSXT states that it "excluded from its comparison groups any shipments to which a fuel surcharge did not apply." As the Waybill Sample does not have a field titled "fuel surcharge", CSXT excluded all movements where the miscellaneous charges were zero.[2] CSXT's exclusion of movements with no miscellaneous charges is improper for at least three reasons.

First, CSXT provides no evidence of a link between fuel surcharges and miscellaneous charges reported in the Waybill Sample. The Waybill Sample User Guide provided by the STB along with the Waybill Sample, defines Miscellaneous Charges as "The total of all miscellaneous charges, excluding transit and freight revenue charges, shown in dollars." The definition clearly makes no reference to fuel surcharges.

Second, CSXT does not provide any evidence that it reports fuel charges separately in the miscellaneous charges field of the Waybill Sample or that fuel surcharges are the only monies reported in the miscellaneous charges field.

---

[2] DuPont comparable movements with zero miscellaneous charges that were excluded by CSXT are identified with a "1" in the DuPont Section of Exhibit_(TDC-8).

Lastly, CSXT attempts to justify its exclusion of movements with no miscellaneous charges, which CSXT equates to fuel surcharges by stating that fuel prices have nearly tripled from January 2002 to January 2008 and more than doubled from January 2002 to December 2005, the time period covered by the Waybill Sample.[5] CSXT gives the impression that it was not compensated for increasing fuel prices if there was no fuel surcharge shown for a movement. Even assuming that the miscellaneous charges did reflect fuel surcharges, the lack of miscellaneous charges does not mean that CSXT was not compensated for increasing fuel prices.

Rates for rail traffic, and therefore rates for the comparable movements, are adjusted by the Rail Cost Adjustment Factor ("RCAF"), or some variation, whether they are tariff moves or contract moves. A major component of the RCAF is fuel prices. Exhibit_(TDC-9) contains a comparison of the increase in the EIA U.S. No. 2 Diesel fuel price cited by CSXT and the fuel component of the RCAF. As shown in Exhibit_(TDC-9), the fuel component of the RCAF increased at a faster rate than EIA's U.S. No. 2 Diesel price. Specifically, the fuel component of the RCAF nearly quadrupled from 1Q02 to 1Q08 and more than tripled from 1Q02 to 4Q05. Even if there was no separate fuel charge, the rate adjustment mechanism, e.g., the RCAF, was capturing the increase in CSXT's fuel prices.

On a final note, CSXT's exclusion of movements with zero miscellaneous charges improperly increases the R/VC ratio for the comparable group as movements with miscellaneous charges have higher R/VC ratios than movements with zero miscellaneous charges. CSXT's selection process results in the highest possible R/VC ratios for the comparable group.

---

[5] See footnote 15 on page 16 of CSXT's Opening evidence.

For the above reasons, CSXT's exclusion of comparable movements simply on the basis of zero miscellaneous charges is improper

d. Rebill Code

In my Opening VS, at page 8, one of my listed selection criteria was that the movement must have a Rebill Code of "0" As defined in the Waybill Sample User Guide provided by the STB along with the Waybill Sample, a Rebill Code of "0" indicates a local movement and Rebill Codes of "1", "2" or "3" reflect only a portion of the through movement [9]

CSXT did not use the Rebill Code as a selection criteria A few of the movements contained in CSXT's comparable group have Rebill Codes other than "0" [10]

CSXT's inclusion of movements with Rebill Codes other than "0" is improper as it violates the selection criteria used by both parties that the movements in the comparable group must be local movements

e. Length of Haul

In my Opening VS, at page 9, I explained that one of my selection criteria for comparable movements was loaded miles within a range of plus or minus 150 miles of the issue movement loaded miles rounded to the nearest 50 miles This resulted in a milage range of 650 to 950 miles for the Pascagoula Movement

---

[9] Rebill Code "1" is defined as "originated-delivered" Rebill Code "2" is defined as "received-delivered" and Rebill Code "3" is defined as "received-terminated"

[10] CSXT comparable movements with Rebill Codes other than "0" are identified with "2" in the CSXT Section of Exhibit (TDC-8)

In Opening, CSXT's selection criteria was much broader i.e., CSXI included movements in the comparable group with mileages as low as 202 miles and as high as 1,130 miles. The difference in length of haul for the comparable movements is the main reason why DuPont did not include many of the movements selected by CSXI.[11]

CSXT's broad mileage range includes many movements that are not comparable to the issue movements. The Pascagoula Movement travels 816.7 miles in the loaded direction. CSXT has included movements with loaded miles as low as 202 miles, less than 25% of the length of the Pascagoula Movement.

To demonstrate the problem with CSXT's mileage range, I performed an analysis of URCS Phase III variable costs for a movement that was included in both my comparable group and CSXT's comparable group. I developed the variable costs for the example movement changing only the miles traveled by the movement and leaving the other characteristics the same. I started with the assumption that the movement traveled 50 miles and increased the miles in increments of 50. I then plotted the variable cost per ton-mile results for each distance to develop the trend line shown on Exhibit_(IDC-10). I then identified the point on the cost per ton-mile curve that corresponded to the lower and upper mileage boundaries in the comparable movements for both DuPont and CSXI. As seen on Exhibit_(IDC-10), the range in cost per ton-mile for CSXT's mileage boundaries is much greater than the range for DuPont's mileage boundaries. In other words, by extending the mileage boundaries to several hundred miles shorter or longer than the issue movement, CSXI has included a much greater variation in costs of providing service. On Exhibit_(TDC-10), CSXI's

---

[11] CSXI comparable movements that are outside the mileage range used by DuPont are identified with a "1" in the CSXI Section of Exhibit_(IDC-8).

range in variable costs is from $0 03938 per ton-mile to $0 02177 per ton-mile DuPont's range is from $0 02462 per ton-mile to $0 02255 per ton-mile

The reason the change in variable costs is significant is that variable cost sets the floor for rate making purposes The contribution made by captive traffic (the differential between the rate and the variable cost) is approximately the same, as the STB's maximum rate procedures produce the rate ceiling With those two facts in mind, movements of shorter haul captive traffic will command higher rates (measured on a mills per ton-mile basis) than movements of longer haul captive traffic Stated differently shorter haul captive movements will have higher rates (measured on a mills per ton-mile basis) than longer haul captive movements, all other things held constant By beginning its comparable group at the 200-mile range and ending over 1,100 miles, CSXT has included moves that are not comparable because of the differences in the length of haul By comparison, DuPont's narrow mileage range results in the selection of similar movements

3. *DuPont's Final* <u>Comparable Group</u>

DuPont s final comparable group for the movement at issue is discussed under the following topics

a Modification to Opening Comparable Group
b Density Criteria

a. Modification to Opening Comparable Group

Based on my review of CSXT s opening evidence, I have made two modifications to my opening comparable group of 21 movements for the Pascagoula Movement The first modification is the elimination of six issue traffic movements The second modification is the addition of eight movements from CSXT's comparable group that meet my selection criteria after my acceptance of CSXT s comparable STCC s

Exhibit_(TDC-11) contains my final comparable group of 23 movements for the Pascagoula Movement The movements shaded in blue are movements that were included in CSXT's opening comparable group and based on Simplified Standards must be included in the final comparable group The movement shaded in yellow was not included in CSXT 's opening comparable group The movements shaded in green were added from CSXT's opening comparable group

b. Density Criteria

In Simplified Standards, at page 17, the STB listed a number of factors relating to the determination of comparable movements. One of these factors was "traffic densities of the likely routes involved "

In order to assess the " traffic densities of the likely routes involved", density information is needed from the railroad as accurate density information is not publicly available In discovery, DuPont requested, and CSXT provided, CSXT system-wide density maps for 2002 through 2006

In its January 15, 2008 decision in this proceeding, at page 3, the STB stated "Neither the carrier nor the shipper is permitted to use information from the carrier's files to advocate for a

particular comparison group " Based on the STB's decision, this prevented DuPont from using the CSXT density charts produced in discovery

In its January 31, 2008 decision in this proceeding, the STB reversed itself, stating, at page 4, The parties may each rely on the traffic density maps provided during discovery to support their comparison group " Unfortunately, there was only one working day between the date this decision was issued and the date opening evidence was due Consequently, neither party included any analysis of density in opening

As the STB has now allowed the use of CSXT's density maps, I conducted a density analysis of the movements contained in each of my final comparable group Using PC*Miler|Rail, I obtained the routes and mileages for each of the movements and applied the line segment densities obtained from the CSXT 2006 density map produced in discovery to calculate the weighted average density in million gross tons per mile ("MGT/mile") for each movement and the simple average density for the comparable group as a whole [12]

Exhibit_(TDC-11), Column (14), contains the results of my analysis for the Pascagoula Movement As shown on Exhibit_(TDC-11), the weighted average density for the issue movement is 35 4 MGT/mile The simple average density for the comparable group is 49 0 MGT/mile The weighted average density for the individual movements ranges from 33 6 MGT/Mile to 91 2 MGT/mile The weighted average density range for the individual movements shaded in blue, i e , the movements that were included by both parties and must be included in the final comparable group ranges from 35 4 MGT/Mile to 63 9 MGT/Mile The movements with higher and lower densities than the blue-shaded movements are from CSXT's opening comparable group The one

[12] The density analysis is included in my electronic workpapers

movement included in my comparable group that is not included in CSXT's opening comparable group (the movement shaded in yellow) falls within the density range of comparable movements selected by both parties

The density range shown above reflects comparable movements based on the density threshold used by the STB When evaluating track and traffic conditions, the STB requires each Class I railroad to group these characteristics by density category [13] Track category A (the most densely traveled rail lines) groups rail lines with 20 MGT/mile or higher

Additionally the STB requires that the Class I railroad calculate road property depreciation rates by density category in Schedule 416 of Annual Report Form R-1 The same basic density categories used for track characteristics, discussed above, are used to calculate road property depreciation rates The comparable movements I selected fall into the top density category used by the STB

In summary I have considered density in my analysis and it supports my final comparable group for the issue movement

B. DUPONT'S FINAL MAXIMUM R/VC RATIO FOR THE ISSUE MOVEMENT

To develop the Maximum R/VC Ratio for the issue movement, I followed the procedures set forth in Simplified Standards First, I selected the comparable group for the issue movement Next, I multiplied the R/VC ratio for each comparable movement by the ratio of the CSXT RSAM and

---

[13] Annual Report Form R-1 Schedule 720 For purposes of Schedule 720 average density is determined based on track-miles and not route miles For purposes of my density analysis I used route miles because track-miles were not available for each route

R/VC $_{4}$ four-year average contained in the STB's December 20, 2007 decision in Ex Parte No 347 (Sub-No 2) *Rate Guidelines - Non-Coal Proceedings* ("Non-Coal Guidelines") I then calculated the mean and standard deviation for the adjusted R/VC ratios for the comparable group Next, using the mean and standard deviation, I calculated the 90% confidence interval around the estimate of the mean to determine the upper boundary of the mean for the comparable group which becomes the threshold for determining if a rate is unreasonable

CSXI followed the same procedures with one major exception CSXI deviated from the STB's specified procedures by applying an annual adjustment ratio (RSAM to R/VC $_{180}$) to the R/VC ratio of each movement in its comparable group, depending on the year of the movement, rather than the STB's specified 4-year average adjustment ratio Simplified Standards makes it very clear that the 4-year average adjustment ratio should be applied The STB states, at page 20, in the section titled Method to Calculate RSAM and R/VC $_{180}$", "In a rate case we will not rely on the figures for a single year but will use a 4-year average where possible " Clearly a 4-year average is possible in this proceeding as the STB published the 2002-2005 RSAM and R/VC $_{180}$ ratios in its December 20, 2007 decision in Non-Coal Guidelines

Table 4 below compares my calculations of the issue movement's R/VC ratio to the Maximum R/VC Ratio calculated using the final comparable group and following the STB's procedures [11]

---

[11] The calculation of the final Maximum R VC Ratio for the issue movement is shown in Exhibit_(TDC-11)

Table 4

Maximum Rate for Issue Movement Using STB's RSAM and R/VC>180

	(1)	Pascagoula - Nelise (2)
1	3Q07 Rate per Car (Including Fuel Surcharge) [1]	$7,143 18
2	3Q07 Variable Cost per Car [2]	$1 913 12
3	R VC Ratio -	373%
4	Maximum R VC Ratio [3]	319%
5	Maximum Rate per Car [4]	$6,102 85
6	Amount CSX I Rate per Car Exceeds Maximum Rate per Car [5]	$1 040 33

- [1] Page 3
- [2] Table 2 above
- [3] Line 1 – Line 2 x 100)
- [4] Exhibit_(JDC-11)
- [5] Line 2 x Line 4
- [6] Line 1 - Line 5

As shown in Table 4 above, CSX I 's rate for the issue movement (Line 1) exceeds the rate based on the Maximum R/VC Ratio (Line 5) for the comparable group by an amount equal to $1.040 33 per car

IV. OTHER RELEVANT FACTORS

In this section of my Reply VS. I first review and critique the other relevant factors included by CSXT in its opening evidence. Then I quantify and apply Dupont's other relevant factors to the issue movement based on Dupont's "Final Offer" comparable group. The results of my other relevant factor analyses are summarized below under the following headings:

A. CSXT's Other Relevant Factors

B. Application of Dupont's Other Relevant Factors

A. CSXT'S OTHER RELEVANT FACTORS

My discussion of CSXT's other relevant factors addresses the two factors developed by CSXT in opening, i.e. (1) an adjustment to RSAM Ratio, and (2) indexing of Waybill Sample variable costs and revenues.

1. Adjustment to RSAM Ratio

In December, 2007, the STB published the results of its RSAM and R/VC_{180} calculations for CSXT.[15] Based on the STB's RSAM and R/VC_{180} ratio calculations for 2002 to 2005, the average mark-up factor developed by dividing the RSAM ratio by the R/VC_{180} ratio equals 1.24. This mark-up factor is applied to movements in the comparable group.

---

[15] See Non-Coal Guidelines, served December 11, 2007 and corrected December 20, 2007.

CSXT states that it used the STB's RSAM and R/VC $_{180}$ figures to calculate the required mark-up ratios, but made an adjustment to its calculations to account for an alleged flaw in the STB's methodology [16] CSXT asserts that the STB's Simplified Standards procedures should have adjusted the $REV_{shortfall}$ component of the RSAM ratio to account for income taxes attributable to the additional revenue needed for CSXT to be deemed revenue adequate Specifically, CSXT believes the correct procedure for developing the mark-up factor is to divide the difference between the RSAM and R/VC $_{180}$ ratios by one less the railroad's statutory federal and state income tax rates, and add the resultant quotient to the R/VC $_{180}$ ratio [17] According to CSXT, this would produce a tax-adjusted RSAM ratio and a resultant tax-adjusted mark-up factor

There are two primary problems with CSXT's RSAM adjustment First, CSXT assumes that the additional revenue from the $REV_{shortfall}$ calculation would be taxed at CSXT's statutory tax rates without any support for its assumption Second, the variable costs used to calculate the RSAM and R/VC $_{180}$ ratios are already overstated due to an over recovery of income taxes, which understates the size of the R/VC $_{180}$ traffic and artificially increases the revenue adequacy adjustment factor I address these two issues below

---

[16] See CSXT Opening Evidence at 19

[17] CSXT's logic is that the $REV_{shortfall}$ component in the RSAM ratio is calculated based on after-tax earnings, and a straight application of the component to the R VC $_{180}$ ratio, which is based on pre-tax revenues, would leave a railroad below a revenue adequate level

a. Statutory Tax Rates
Versus Effective Tax Rates

CSXT's assertion that parties should adjust the $REV_{short\ line}$ component of the RSAM ratio at CSXT's statutory federal and state tax rates ignores the fact that CSXT's income tax expenses do not reflect a straight application of the statutory tax rates. Simply stated, CSXT's effective tax rate is significantly different than the statutory tax rate.

The effective tax rate is the amount of tax an individual or firm pays when all other government tax offsets or payments are applied, divided by the tax base. CSXT's Annual Report Form R-1 data clearly shows that the railroad's effective tax rate does not equal combined federal and state statutory rates as assumed by CSXT. One can distinctly see this fact in looking at CSXT's Form R-1 data. In 2003, CSXT recorded $297 million in income from continuing operations before taxes, but booked a tax benefit, not a tax expense, of $50 million.[18] In other words, CSXT's net railway operating income increased due to tax benefits. This was not an isolated situation. CSXT booked a tax benefit of $21.5 million in 2002 while generating nearly $500 million in income from continuing operations.[19] In sum, between 2002 and 2005, CSXT's effective tax rates were well below the statutory standards in each year.

There are a number of factors that can drive a firm's effective tax rate well below its statutory tax rate. These include, but are not limited to, the impact of deferred income taxes, tax-loss carryforwards and carrybacks and governmental tax credits. CSXT's Form R-1 data for 2003 does not indicate the reason for the large tax credit booked by CSXT, but the simple fact is that it illustrates clearly that CSXT is not paying taxes at a statutory level.

---

[18] See CSXT 2003 Form R-1, Schedule 210, Lines 46 and 63.
[19] See CSXT 2002 Form R-1, Schedule 210, Lines 46 and 63.

While it is clear that CSXT's average effective tax rate is below the statutory level, it is unclear that CSXT s marginal tax rate is also below the statutory level, since it is not possible to verify CSX I s effective marginal tax rate with the available information A marginal tax rate is the tax rate that applies to the last dollar of the tax base, and often applied to the change in tax obligations as income rises In this instance, the $REV_{short\ ...}$ dollars added to the Revenue $_{80}$ while holding all other operating expenses constant, would be considered marginal revenue CSX I assumes that this revenue would be taxed at the statutory rate However it is not possible to calculate the actual impact of taxes on this additional revenue with data in the record, or with publicly available CSXT financial data Rather, to effectively calculate the impact of the additional revenue would require a complete set of CSXT income tax returns for the 2002 to 2005 time period Without this data, one cannot truly determine the tax impact, if any, of the additional revenue

CSXT simplistically assumes that the additional revenue contributed by the $REV_{short\ ...}$ figure would be taxed at a statutory level CSXT has clearly provided no support for this assumption in the record of this case If the STB were to accept CSXT's argument that the $REV_{short\ ...}$ component of the RSAM ratio required a tax adjustment, the only logical tax rate to use for the adjustment is CSX I s effective tax rate for each year The use of CSXT's effective tax rate reflects the fact that CSX I does not incur tax expenses at the statutory rate and would therefore provide an adjustment consistent with CSXT s actual tax position Exhibit_(TDC-12) contains a restatement of CSX I's mark-up factor calculated using CSX I s effective tax rates As shown in Exhibit_(TDC-12), the corrected mark-up factor equals 1 26, rather than CSX I's overstated factor of 1 38

b. URCS Overstates the Required Tax Recovery

The STB's URCS model includes a variable return on investment ("ROI") component calculated using a pre-tax weighted-average cost of capital ("WACC") based on the federal statutory tax rate of 35 percent. The use of the pre-tax WACC in the variable ROI, which adjusts the cost of equity to allow for a return to common equity holders from after-tax earnings, explicitly adds additional variable costs to each movement to cover the railroad's hypothetical tax burden. However, as explained above, railroads seldom pay taxes at the statutory rate due to offsets and credits, and their actual tax expenses are much lower than implied by the statutory rate. Therefore, using a statutory tax rate in the URCS model leads to an overstatement in each movement's variable costs.

Exhibit_(UDC-13) illustrates the impact of the overstatement of tax recovery inherent in URCS. As shown in Exhibit_(UDC-13), actual federal taxes booked by CSXT in 2005 equaled $220 million based on R-1 Schedule 210, Line 47. In contrast, the STB's 2005 URCS implicitly included $748 million to cover the taxes inherent in the URCS variable ROI calculation. In other words, the URCS model included over three times the amount of costs necessary to cover CSXT's actual income tax expense.

The effect of the tax overstatement in URCS has a direct impact on the calculation of the RSAM revenue adequacy adjustment factor. At a base level, the STB uses URCS variable costs, along with revenue statistics, to identify the movements to include in the R/VC_{180} sample group, and the subsequent $Revenue_{180}$. The problem lies in that the STB has effectively excluded movements from the R/VC_{180} sample group, and lowered its $Revenue_{180}$ figure, by overstating tax recovery in its URCS variable cost calculations. For example, assume a movement has an R/VC ratio of 179

percent based on the STB's URCS variable costs as presently calculated Removing the tax recovery overstatement from the URCS variable costs would reduce the denominator in the R/VC ratio calculation and increase the R/VC ratio for the movement above the 180% threshold for inclusion in the R/VC_{180} sample group It is likely that correcting the URCS variable costs for this tax recovery overstatement would increase the number of movements in the R/VC_{180} sample group, and thereby increase the total $Revenue_{180}$

Any change in the $Revenue_{180}$ has a direct impact on the STB's revenue adequacy adjustment factor since, in its simplest form, the adjustment factor is equal to 1 plus the $REV_{shortfall}$ divided by the $Revenue_{180}$.[20] If the STB were to calculate CSXT's URCS variable costs using a pre-tax WACC taking into consideration CSXT's effective tax rate, instead of a statutory tax rate, the size of the R/VC_{180} traffic group would be larger and produce a more accurate revenue adequacy adjustment factor

2. Indexing of Waybill Sample Variable Costs and Revenues

CSXT asserts that the 2002 to 2005 revenue and variable cost data for the comparable group provides an inconsistent comparison for evaluating the R/VC ratios of the challenged rates, which were established in 2007 due to inflation in rail rates and railroad operating costs.[21] To address this alleged inconsistency, CSXT proposed three indexing methods – two related to indexing revenues and one for indexing variable costs – to adjust the comparable group's R/VC ratios CSXT's first proposed method for indexing prior year revenues to 2007 levels relied upon average chemical revenue per unit as reported in CSXT's publicly available financial reports for the 2002 to 2007

---

[20] $1 - (REV_{shortfall} \div Revenue_{180})$
[21] See CSXT Opening Evidence at 21

period. The second revenue indexing method used a combination of the publicly available changes in revenue developed in CSXT's first proposal and revenue data extracted from CSXT's confidential traffic files. Finally, CSXT proposed to adjust the comparable group's variable cost calculations based on publicly available railroad cost factors.

As a threshold matter, Simplified Standards explicitly rejected as unnecessary the very type of indexing proposed by CSXT.[22] The STB also stated that if any party wished to present additional evidence of indexing of revenues and/or costs, the additional evidence would be evaluated as "other relevant factors."[23] The STB warned, though, that the party submitting such additional evidence would bear the burden of proof of the necessity of the proposed change and require that the proposing party quantify the evidence in an objective, transparent manner.[24]

With the STB's instructions in mind, it is clear that CSXT did not meet its burden because CSXT did not show that the adjustments are necessary. First, CSXT's evidence was not presented objectively since CSXT failed to adjust all relevant revenue and cost data, and instead focused only on the data that would increase the comparable group's R/VC ratios. Second, CSXT's indexing leads to a double count of the revenue necessary for CSXT to reach revenue adequacy. Third, CSXT has failed to provide thorough and reliable proof that the adjustments were necessary to reflect changes in the market. I discuss my reasons for CSXT's failures below.

---

[22] See Simplified Standards at 84-85. "We do not believe that any adjustment to rail costs is necessary," and "Nor do we believe a revenue adjustment is appropriate."

[23] See Simplified Standards at 85.

[24] See Simplified Standards at 77.

a. CSXT's Indexing is Unobjective and Unnecessary

CSXT stated that it indexed the comparable group's revenues and variable costs to account for the timing differences between the revenue and cost figures of the movements in the comparable group and those of the issue traffic. According to CSXT, indexing the comparable group's revenues and variable costs places the outdated comparable group R/VC calculations at the same price level as that of the issue traffic. The problem with CSXT's adjustments is that they were far from objective because CSXT only included adjustments that benefitted itself, and ignored adjustments that potentially would lower the comparable group's adjusted R/VC ratios.

CSXT ostensibly adjusted the revenue and costs figures for the comparable group from 2002-2005 to 2007 levels in order to place them at the same levels as the issue traffic. However, the comparable group's revenues and variable costs are not the only historic revenue and cost statistics used in the STB's Three Benchmark Methodology. Namely, the STB's Three Benchmark Methodology also calls for the use of historic revenue and variable cost data in the calculation of the RSAM and R/VC_{IX} ratios. Failure to adjust all variable costs and revenues leads to a glaring inconsistency in the application of the data. What we are left with after CSXT's indexing are comparable group R/VC ratios nominally indexed to 2007 price levels, and RSAM and $Revenue_{/180}$ ratios based on averages of 2002 to 2005 rates and costs. The mismatch in levels between the comparable group R/VC's and the RSAM and R/VC_{180} ratios obviously leaves an unknown and unexplored outcome to the maximum rate process. CSXT failed to explore these issues, and left the STB with a process that clearly does not produce a transparent outcome.

The question then becomes why did CSXT not index the data included in the RSAM and R/VC $_{(V)}$ ratios when indexing the other revenues and variable costs? Any truly objective analysis would have adjusted all revenues and costs to the same levels, including the RSAM and R/VC $_{180}$ figures

b. CSXT's Indexing is Redundant

In addition to being unobjective and one-sided, the indexing of the sample group's revenue and variable cost figures is redundant due to the presence of the RSAM revenue adequacy adjustment factor. As the STB explained in Simplified Standards, the RSAM revenue adequacy adjustment factor is designed to provide a ratio to adjust the rates in the comparison movements to reflect the maximum lawful rates the carrier can charge captive traffic taking into consideration the railroad's need for adequate revenues.[25] In other words, the Three Benchmark Methodology already adjusts rates in the comparable group in an effort for a railroad to achieve and maintain revenue adequacy.

By indexing the revenue component of the comparable group to higher 2007 levels in order to reflect rate increases, CSXT's proposal to reach revenue adequacy, while also applying a RSAM revenue adjustment factor designed to adjust rates to a revenue adequate level, would push the comparable group's revenues beyond that necessary for revenue adequacy. Simply stated, CSXT cannot double count its efforts to reach a revenue adequate rate levels.

The STB provided an example of CSXT's unnecessary index adjustments.[26] The STB provides an example of a revenue adequate railroad heaping an index adjustment on top of revenues that already placed the railroad in a revenue adequate position. As the STB noted, indexing would only

---

[25] See Simplified Standards at 81.
[26] See Simplified Standards at 85.

place the railroad further above the revenue adequacy level The STB's logic also holds true for a railroad that is not currently revenue adequate, but is raising its rates to reach revenue adequacy Stacking an adjustment for helping a carrier to become revenue adequate on top of an adjustment to reflect a railroad's increasing rates to reach revenue adequacy is clearly unnecessary and would result in rates reflective of a position well beyond revenue adequacy

c. CSXT Has Not Proven the Market Has Shifted in a Transparent Manner

CSXT states that it indexed the revenues in the comparable group to account for the significant market changes and dynamics that have occurred in the chemical market between 2007 and the 2002 and 2005 time period from which the comparable group was extracted [27] There is no denying that CSXT s total revenues for the chemical group have increased between 2002 and 2007 However, CSXT has not provided clear evidence of the cause of the increased revenues, or if the increased revenues was attributable to all chemical traffic CSXT s use of publicly available changes in revenues per unit for general chemical traffic falls far short of the transparency needed to pass the STB's "other relevant factors" standard to adjust the comparable group R/VC ratios Additionally much of this increase in revenues has not come from a shift in the markets and dynamics, but from CSXT s collection of fuel surcharges

As indicated above CSXT's two revenue indexing processes rely upon changes in average revenue per unit for CSXT's entire chemical business group CSXT's first method indexes the comparable group's revenues based wholly upon historic changes in the chemical business group s

---

[27] See CSXT Opening at 22

average revenue per unit. CSXT's second proposed indexing method uses a combination of the chemical business group data developed in its first method and confidential revenue data developed from its internal traffic files. The problem with both approaches is that they rely in whole or in part upon changes in revenues for an entire business group, and not changes in revenues for the specific commodity or movements at issue. CSXT has failed to meet its burden of proof that the publicly available pricing data for CSXT's chemical business as a whole reflects changes in the movements included in the comparable group.

CSXT's website lists 29 different major chemical groups in its chemical business group with multiple sub-categories within each macro group.[28] While CSXT may categorize all these commodities as "chemicals," the actual products are not nearly as homogenous and cover a wide range of commodities including sand, plastics, petroleum coke, LPG and soda ash. Each of these different commodities is driven by different market factors and conditions that may have absolutely nothing in common other than being included in CSXT's chemical business group. CSXT has presented no evidence that the changes in revenue and revenue per unit for its total chemical business group has the same rate of changes for the commodities included in the comparable group. CSXT carries the burden to show that these changes are necessary to reflect changes in the market for the specific commodities. CSXT has fallen well short of this mark.

The STB stated that parties may present additional "other relevant factor" evidence for indexing to show "market changes not reflected in the comparison group."[29] In this instance, CSXT has not shown that the changes in both its publicly published revenue statistics and its internal confidential revenue data was due entirely to market changes.

---

[28] See http://www.csx.com/?fuseaction=customers.pricing_lists-detail&bur=CLI&bun=Chemicals#CSX13200 accessed on February 27, 2008.

[29] See Simplified Standards at 85.

CSXT shows its revenue indexing in terms of stronger pricing due to changes in market conditions stating that indexing is necessary to account for " significant market changes and dynamics for the shipments of chemical traffic "[30] While changing market conditions may account for some increases in revenues, a primary driver in higher 2007 chemical business revenues has also been increases in assessed fuel surcharges CSXT's Fourth Quarter, 2007 Quarterly Financial Report made this point crystal clear indicating the change in chemical revenues was due to several factors including higher fuel surcharges

> Chemicals - Revenue and revenue per unit increases were driven primarily by improved pricing and a higher fuel surcharge rate [31]

In other words both market and non-market issues have impacted CSXT s revenues in some unknown combination

The STB s decision in Ex Parte 661 *Rail Fuel Surcharges*, served January 26, 2007 ("Ex Parte 661") de-linked railroad fuel surcharges from base transportation rates, and instead linked railroad fuel surcharges to actual operations [32] The STB stated

---

[30] See CSXT Opening at 22

[31] CSXT Quarterly Financial Report Fourth Quarter 2007, page 10

[32] In fact the STB took CSXT to task in its Ex Parte 661 decision for attempting to argue that a fuel surcharge was a revenue enhancement tool rooted in differential pricing, and not just a means for recovering higher fuel costs See Ex Parte 661 at 6

> Because railroads rely on differential pricing, under which rates are dependent upon factors other than costs, a surcharge that is tied to the level of the base rate, rather than to fuel consumption for the movement to which the surcharge is applied, cannot fairly be described as a cost recovery mechanism
>
> ***
>
> The railroads will have a 90-day transition period to adjust their fuel surcharge programs [33]

As mandated by the STB CSXT changed its fuel surcharge program from one based on a percentage of base rates to one based on a link to operations

CSXT clearly had increased revenues in 2007, but it is not possible from publicly available data to discern what portion of the change was driven by changes in the transportation market and what was driven by increases in fuel surcharge revenues which are independent of the chemical transportation market [34] CSXT carries the burden of showing that the increases in chemical revenues were due to changes in markets in a transparent manner CSXT has not met this burden

B. APPLICATION OF DUPONT'S OTHER RELEVANT FACTORS

In my Opening VS, I included two other relevant factors and quantified their application to the calculation of the Maximum R/VC Ratio for the issue movement The procedures described and the analyses contained in my Opening VS remain unchanged However, because the

---

[33] See Ex Parte 661 at 6

[34] CSXT may try to argue that increases in fuel surcharge revenue were due to changes in the fuel market, and therefore linked to changes in 'markets' This would be a red herring CSXT clearly states that it was looking at *changes in the chemical transportation market, and not the fuel market in advocating its adjustment*

comparable group and the Maximum R/VC Ratio has changed from my Opening VS, I have revised the calculations showing the application of DuPont's other relevant factors

These revisions are contained below under the following topics

1 STB's RSAM Ratio Adjusted for Efficiency

2 STB's RSAM and R/VC $_{180}$ Ratios Adjusted for the STB's New Cost of Capital Methodology

1. STB's RSAM Ratio
Adjusted for Efficiency

At pages 11-12 of my Opening VS I described the methodology I used to adjust the STB's RSAM for efficiency I have not changed that methodology or its results in Reply

The results from using the STB's RSAM adjusted for efficiency to calculate the Maximum R/VC Ratio for the final comparable group are summarized in Table 5 below

Table 5

Maximum Rate for Issue Movements Using Efficiency RSAM and R/VC>180

	Item	Pascagoula - Neuse
	(1)	(2)
1	3Q07 Rate per Car (Including Fuel Surcharge) [1]	$7 143 18
2	3Q07 Variable Cost per Car [2]	$1 913 12
3	R VC Ratio [3]	373%
4	Maximum R/VC Ratio with RSAM Adjusted for Efficiency [4]	299%
5	Maximum Rate per Car [5]	$5 720 23
6	Amount CSXT Rate per Car Exceeds Maximum Rate per Car [6]	$1 422 95

[1] Page 3
[2] Table 2 above
[3] Line 1 - Line 2 x 100
[4] Electronic workpapers
[5] *Line 2 x Line 4*
[6] Line 1 - Line 5

As shown in Table 5 above CSXT's rate for the issue movement (Line 1) exceeds the rate based on the Maximum R/VC Ratio using the RSAM adjusted for efficiency (Line 5) for the comparable group by an amount equal to $1 422 95 per car

2. STB's RSAM and R/VC$_{>180}$ Ratios Adjusted for the STB's New Cost of Capital Methodology

At pages 13-15 of my Opening VS I described the methodology I used to incorporate the STB's January 17, 2008 decision in Ex Parte No. 664 *Methodology to be Employed in Determining the Railroad Industry's Cost of Capital* ("Cost of Capital") to replace its single-stage Discounted Cash Flow ("DCF") model with a Capital Asset Pricing Model ("CAPM") to determine the cost of equity component in the cost of capital calculation. I have not changed that methodology or its results in Reply.

The results from incorporating the CAPM cost of capital methodology to calculate the Maximum R/VC Ratio for the final comparable group are summarized in Table 6 below.

Table 6

Maximum Rate for Issue Movements Using CAPM RSAM and R/VC>180

	Item (1)	Pascagoula - Neuse (2)
1	3Q07 Rate per Car (Including Fuel Surcharge) -	$7,143 18
2	3Q07 Variable Cost per Car -	$1 913 12
3	R VC Ratio -	373%
4	Maximum R/VC Ratio with RSAM Adjusted for CAPM [4]	297%
5	Maximum Rate per Car [5]	$5,681 97
6	Amount CSXT Rate per Car Exceeds Maximum Rate per Car -	$1 461 21

- Page 3
- Table 2 above
- Line 1 – Line 2 x 100
- Electronic workpapers
- Line 2 x Line 4
- Line 1 - Line 5

As shown in Table 6 above, CSXT's rate for the issue movement (Line 1) exceeds the rate based on the Maximum R/VC Ratio using the RSAM and R/VC_{180} ratios adjusted for the CAPM cost of capital (Line 5) for the comparable group by an amount equal to $1,461 21 per car

V. RELIEF FOR DUPONT

In this section of my Reply VS. I present the relief that DuPont is entitled to for the issue movement based on the analyses and methodologies described above The results of my analyses are shown in Table 7 below

Table 7

Estimated Relief to DuPont For Movements At Issue
(in thousands)

		Based on		
	Movement	STB's RSAM and R/VC>180	Efficient RSAM and R VC>180	CAPM RSAM and R/VC>180
	(1)	(2)	(3)	(4)
1	Pascagoula MS - Neuse NC	$1.399	$1 914	$1 965

As shown in Table 7 above. DuPont is entitled to relief totaling $1 40 million using the STB's RSAM and R/VC $_{180}$ ratios subject to the appropriate cap in Three-Benchmark cases The relief increases to $1 91 million using the RSAM and R/VC $_{180}$ ratios adjusted for efficiency and to $1 97 million using the RSAM and R/VC $_{18}$, ratios adjusted only for the CAPM cost of capital (i e unadjusted for efficiency) [25], again subject to the appropriate cap

[25] See electronic workpapers file "HAZ Relief Summary Reply xls" for the detailed calculations

VERIFICATION

COMMONWEALTH OF VIRGINIA)
)
CITY OF ALEXANDRIA)

I, THOMAS D CROWLEY, verify under penalty of perjury that I have read the foregoing Verified Statement of Thomas D Crowley, that I know the contents thereof, and that the same are true and correct Further I certify that I am qualified and authorized to file this statement

Thomas D Crowley

Sworn to and subscribed
before me this 5th day of March, 2008

Diane R Kavounis
Notary Public for the State of Virginia

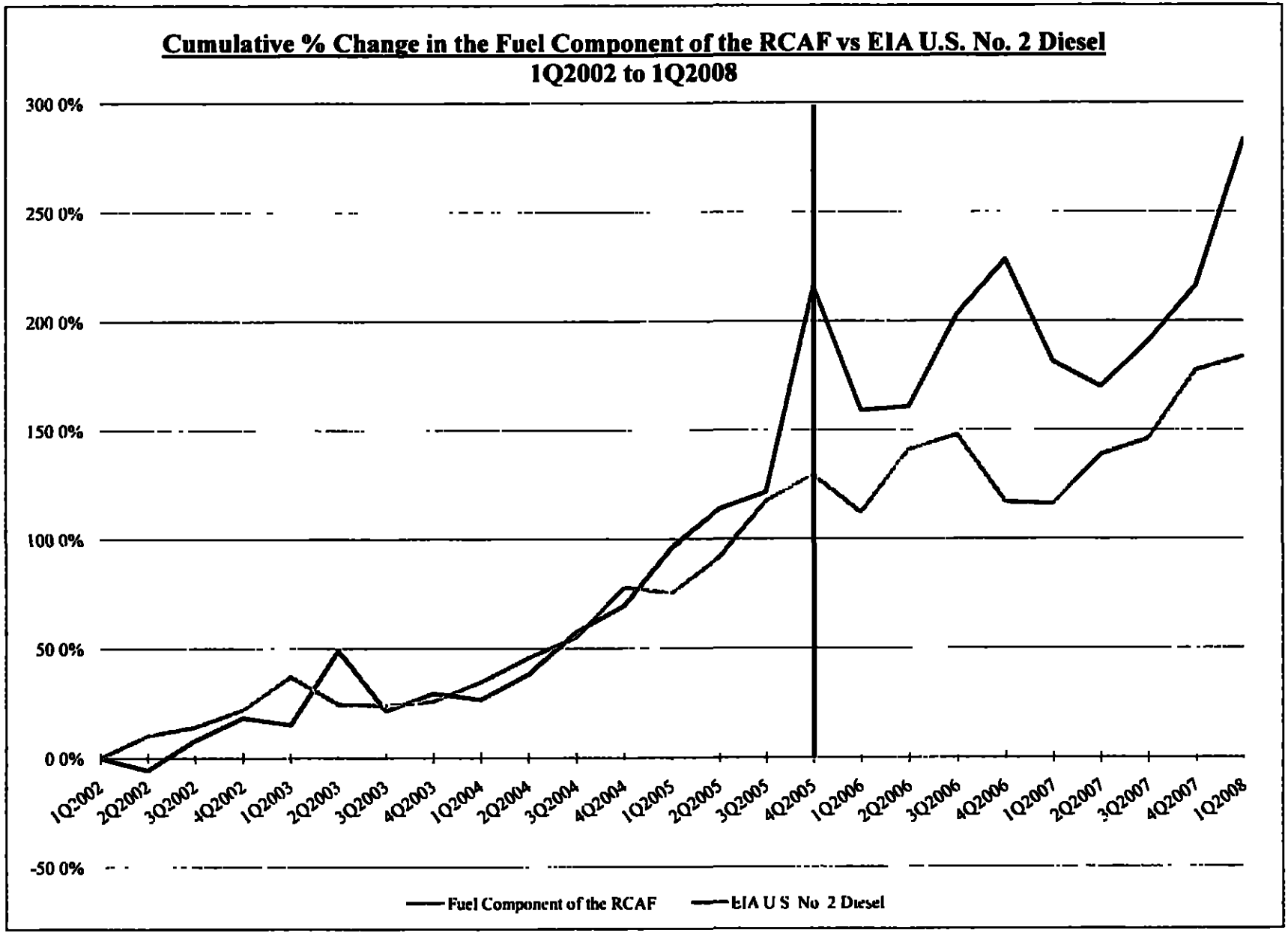
My Commission expires November 30, 2012

REDACTED

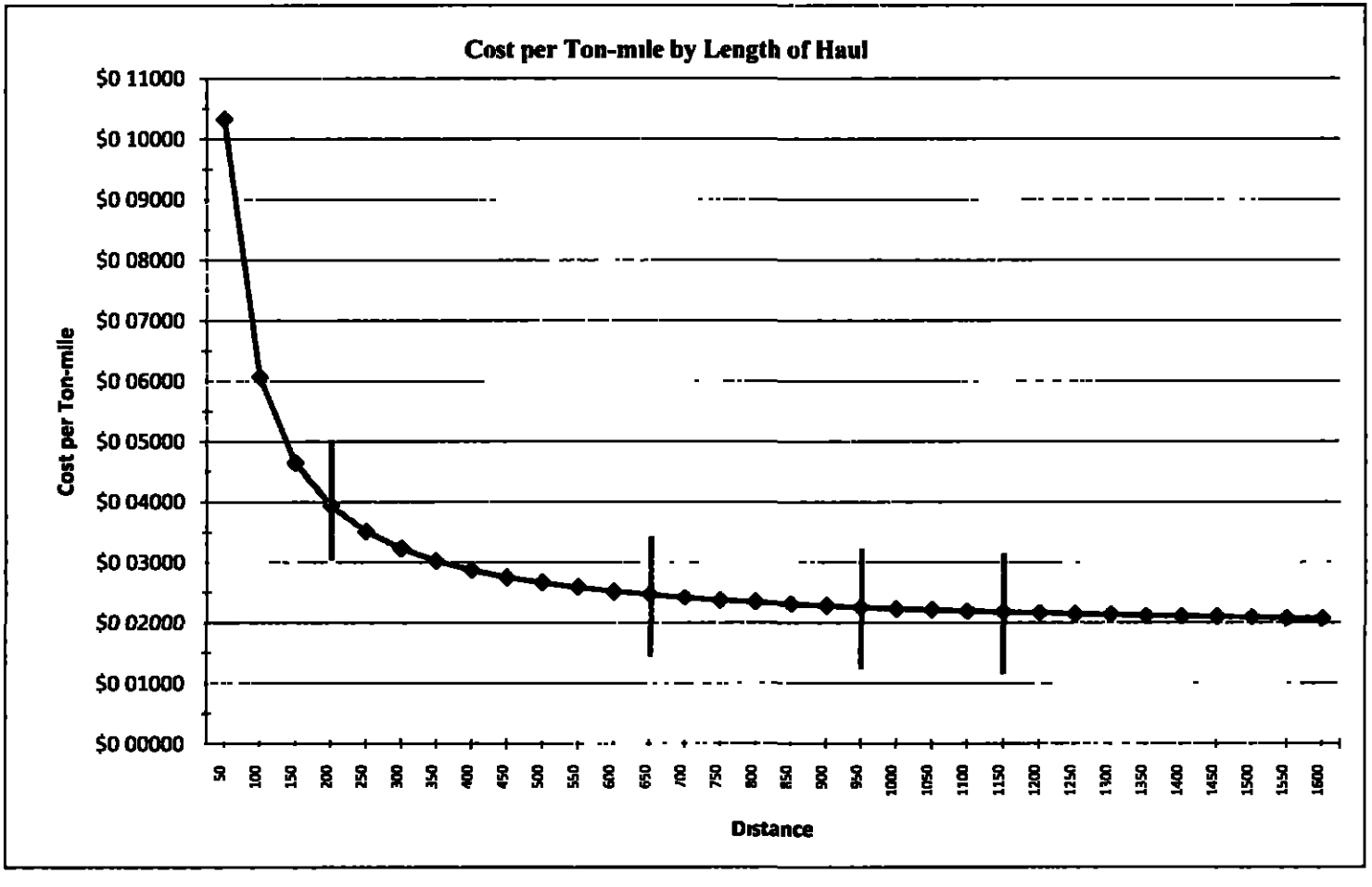
REDACTED

Comparison of the Change in the Fuel Component of the RCAF to the EIA's U.S. No. 2 Diesel

	Quarter (1)	Fuel Component of the RCAF (2)	Cumulative % Change (3)	EIA U S No 2 Diesel (4)	Cumulative % Change (5)
1.	1Q2002	87 4	0 0%	117 8	0.0%
2	2Q2002	82 5	-5 6%	130.0	10.3%
3	3Q2002	94.4	8.0%	134 6	14 2%
4	4Q2002	103 5	18.4%	143 7	21 9%
5	1Q2003	100 7	15 2%	161 7	37 2%
6	2Q2003	130 4	49 2%	146.9	24 7%
7	3Q2003	106 3	21 6%	146 3	24 1%
8	4Q2003	113 3	29 6%	148 4	26 0%
9	1Q2004	110 8	26 8%	158 7	34 7%
10	2Q2004	120 8	38 2%	171 7	45 7%
11	3Q2004	137 7	57 6%	182.9	55 3%
12	4Q2004	148 3	69 7%	209 7	78 0%
13	1Q2005	171 5	96 2%	206 6	75.4%
14	2Q2005	186 9	113 8%	226 0	91.8%
15	3Q2005	193 6	121 5%	256 4	117 6%
16	4Q2005	276.2	216.0%	270 4	129 5%
17	1Q2006	226 4	159 0%	250 0	112 2%
18	2Q2006	227 9	160.8%	284 1	141 1%
19.	3Q2006	265 2	203 4%	292 1	147 9%
20	4Q2006	287 0	228 4%	255 8	117 1%
21	1Q2007	245.9	181.4%	254 7	116 1%
22	2Q2007	235 9	169 9%	281 3	138 7%
23	3Q2007	253 9	190 5%	289 7	145 9%
24	4Q2007	276 4	216 2%	327 0	177 6%
25	1Q2008	334 8	283.1%	334 2	183 7%


Cumulative % Change in the Fuel Component of the RCAF vs EIA U.S. No. 2 Diesel
1Q2002 to 1Q2008
300 0%
250 0%
200 0%
150 0%
100 0%
50 0%
0 0%
-50 0%
1Q2002
2Q2002
3Q2002
4Q2002
1Q2003
2Q2003
3Q2003
4Q2003
1Q2004
2Q2004
3Q2004
4Q2004
1Q2005
2Q2005
3Q2005
4Q2005
1Q2006
2Q2006
3Q2006
4Q2006
1Q2007
2Q2007
3Q2007
4Q2007
1Q2008
Fuel Component of the RCAF
EIA U S No 2 Diesel

Hazardous Commodity - Lane 1



CSXT Mileage Range for Comparable Moves

DuPont Mileage Range for Comparable Moves

REDACTED

Corrected RSAM Adjustment Calculation

	Item (1)	Source (2)	2002 (3)	2003 (4)	2004 (5)	2005 (6)	Four-Year Average 1/ (7)
STB's Calculations							
1	Board RSAM Ratio	Ex Parte 347 (Sub-No 2)	286%	292%	292%	300%	292 5%
2	Board R/VC >180	Ex Parte 347 (Sub-No 2)	238%	239%	231%	236%	236 0%
3	STB RSAM Mark-Up	Line 1 – Line 2	1 20	1 22	1 26	1 27	1 24
CSXT's RSAM Adjustment							
4	Shortfall (After -Tax)	Line 1 - Line 2	48%	53%	61%	64%	57%
5	CSXT Shortfall Calculation	Line 4 – (1 - 38 5%) 2/	78%	86%	99%	104%	92%
6	CSXT Adjusted RSAM	Line 2 + Line 5	316%	325%	330%	340%	327 8%
7	CSXT Adjusted RSAM Mark-Up	Line 6 – Line 2	1 33	1 36	1 43	1 44	1 39
Corrected RSAM Adjustment							
8	Income (Loss) from continuing operations (before inc taxes)	Sch 210 Ln 46	479,373	296,642	511,043	963,736	562,699
9	Income Taxes On Ordinary Income	Sch 210 Ln 63	(21,562)	(50,403)	15,220	249,418	48,168
10	Effective Tax Rate	Line 8 – Line 7	-4 5%	-17 0%	3 0%	25 9%	1 8%
11	Corrected Shortfall Calculation	Line 4 – (1 - Line 10)	46%	45%	63%	86%	60 1%
12	Corrected Adjusted RSAM	Line 2 + Line 11	284%	284%	294%	322%	296 1%
13	Corrected Adjusted RSAM Mark-Up	Line 12 – Line 2	1 19	1 19	1 27	1 37	1 26

1/ Simple average of Columns (3) to (6)
2/ CSXT calculated an effective tax rate of 38 5% including state taxes

Federal Income Tax Provision Included In URCS By STB

	Item (1)	Source (2)	2005 CSXT Amount (3)
1	CSX URCS Total Return On Investment @17 9%	URCS D8P1L135	$2,348,502
2	CSX URCS Total Return On Investment @12 2%	URCS D8P1L135 1/	$1,600,655
3	Provision For Federal Income Tax Included In URCS By ST	Line 1 - Line 2	$747,847
4	Actual Federal Taxes	CSX R-1 Sch 210 Line 47	$220,345
5	Tax Provision Included In URCS By STB In Excess Of Actual Taxes Paid	Line 3 - Line 4	$527,502

1/ URCS developed without provision of federal income tax

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

E I DUPONT DE NEMOURS AND COMPANY Complainant, v CSX TRANSPORTATION, INC , Defendant	)	Docket No NOR 42101

PART III – REPLY EXHIBITS

Exhibit A DuPont Contract Fact Sheet

Exhibit B Bear Stearns 2007 Rail Volume Analysis

EXHIBIT A

REDACTED

EXHIBIT B

Moreno, Jeffrey

Subject: FW Week 52 Rail Volumes Rail Volumes Deteriorate Further During Volatile Christmas Week

Attachments: Week 52-07 xls, Disclaimer txt

From: Wolfe, Edward [mailto:ewolfe@bear.com]
Sent: Thursday, January 03, 2008 11:22 AM
To: Wolfe, Ed (Exchange)
Subject: Week 52 Rail Volumes. Rail Volumes Deteriorate Further During Volatile Christmas Week

Pasted below, we have included brief comments on Week 52 rail volumes and service metrics We have also attached an Excel file with company and segment data

Our more in depth *On Track* note will be available tomorrow morning

BEAR STEARNS

DISCLOSURES & REG AC BELOW

Week 52: Rail Volumes Deteriorate Further During Volatile Christmas Week

VOLS DETERIORATE. Total Week 52 vols declined 6 0% y-o-y, deteriorated vs -2 8% and -3 2% in the prior 2 weeks and -2.3% for the full year In 4Q rails vols declined 1.0%, improved vs. -2 4% last quarter and -2 8% in 1H·07 Vols for the Canadian rails declined -3 1% y-o-y and vols for the Big 4 U.S rails were down 6 6% y-o-y In 4Q vols for the Canadian rails were up 4 4%, improved vs +0 2% last quarter and vols for the Big 4 U S rails were down 2.1%, improved vs -3 0% last quarter

TIMING OF CHRISTMAS LIKELY A LARGE DRAG. Christmas occurred on a Tuesday this year, impacting two full work days (Monday, Christmas Eve and Tuesday) whereas last year Christmas occurred on a Monday, impacting just one full work day, with Christmas Eve occurring on a Sunday (Sunday is typically a slower freight day) We expect the rails to make up that vol. during 1Q although the first week could see similar effects with New Years Day this year on a Tuesday vs Monday a year ago. Continued weak demand as well as the lingering effects of harsh weather conditions across the western U S and Canada also contributed to the decline in vols

BROAD BASED WEAKNESS. Vols declined y-o-y in 6 of 8 segments, led by declines in autos (-21%), intermodal (-8%) and paper/lumber (-22%) Coal vols declined 4% and grain vols declined 3% Minerals/stone vols also declined 4% On the positive side, chemicals vols were flattish and metals were up a solid 5%

NSC AND CNI LESS WORSE AMONG THE CLASS I's. Harsh weather conditions in the Midwest continued to impact BNI and UNP, with vols down 6% and 7%, respectively NSC was the least worst among the U S rails this week, with vols down 5%, while CSX's vols were down 9% In Canada, CNI's vols were down 2% and CP's vols were down 5%

MIXED SERVICE METRICS. 3 of the 4 U S Class I rails reported faster train speeds while 3 reported deteriorated dwell times BNI reported the best y-o-y improvement in train speeds while NSC reported the best y-o-y improvement in dwell times In Canada, CNI's y-o-y train speeds declined and y-o-y dwell times deteriorated We note that complete service metrics for CP are not available yet

See the attached spreadsheets and tomorrow's On Track note for more detail by company and by segment.

Have a great day!

Ed

Looking for our latest models or research? A fast way to access notes, reports and models is by clicking on Bear's Research Library Click here to access research by company or analyst

Equity Research Analyst	Phone	Email	Sector	Rating
Edward Wolfe	212-272-7048	ewolfe@bear com	Airfreight & Surface Transportation - Railroads	Market Weight
Scott Group	212-272-0692	sgroup@bear com		

Companies Analyzed

Company Name	Ticker/Price Chart	Yesterday's Closing Price	Rating	Target Price	Risk (If target is included)	Methodology (If target is included)
Union Pacific	UNP	124 24	Peer Perform			
Norfolk Southern	NSC	49 41	Outperform			
CSX Corporation	CSX	43 45	Peer Perform			
Canadian Pacific Railway (Canada)	CP CN	64 45	Peer Perform			
Canadian Pacific Railway (US)	CP	64 45	Peer Perform			
Canadian National (Canada)	CNR CN	46 40	Peer Perform			
Canadian National (US)	CNI	46 40	Peer Perform			
Burlington Northern Santa Fe	BNI	82 93	Peer Perform			

Analyst Certification

The Research Analyst(s) who prepared the research report hereby certify that the views expressed in this research report accurately reflect the analyst(s) personal views about the subject companies and their securities The Research Analyst(s) also certify that the Analyst(s) have not been, are not, and will not be receiving direct or indirect compensation for expressing the

specific recommendation(s) or view(s) in this report

Edward Wolfe

Important Disclosures

Bear Stearns does and seeks to do business with companies covered in its research reports. As a result investors should be aware that the Firm may have a conflict of interest that could affect the objectivity of this report
Customers of Bear Stearns in the United States can receive independent, third-party research on the company or companies covered in this report, at no cost to them, where such research is available Customers can access this independent research at *www bearstearns com/independentresearch* or can call (800) 517-2327 to request a copy of this research
Investors should consider this report as only a single factor in making their investment decision

BNI Bear Stearns is affiliated with the specialist that makes a market in the common stock of this issuer, and such specialist may have a position (long or short) and may be on the opposite side of public orders in such common stock

For important disclosure information regarding the companies in this report, please contact your registered representative at 1-800-999-2000, or write to Sandra Pallante, Equity Research Compliance, Bear, Stearns & Co Inc , 383 Madison Avenue, New York, NY 10179

The costs and expenses of Equity Research, including the compensation of the analyst(s) that prepared this report, are paid out of the Firm's total revenues, a portion of which is generated through investment banking activities This report has been prepared in accordance with the Firm's conflict management policies Bear Stearns is unconditionally committed to the integrity, objectivity, and independence of its research Bear Stearns research analysts and personnel report to the Director of Research and are not subject to the direct or indirect supervision or control of any other Firm department (or members of such department) This publication and any recommendation contained herein speak only as of the date hereof and are subject to change without notice Bear Stearns and its affiliated companies and employees shall have no obligation to update or amend any information or opinion contained herein, and the frequency of subsequent publications, if any, remain in the discretion of the author and the Firm

Bear, Stearns & Co Inc Equity Research Rating System Ratings for Stocks (vs analyst coverage universe) Outperform (O) - Stock is projected to outperform analyst's industry coverage universe over the next 12 months Peer Perform (P) - Stock is projected to perform approximately in line with analyst's industry coverage universe over the next 12 months Underperform (U) - Stock is projected to underperform analyst's industry coverage universe over the next 12 months

Ratings for Sectors (vs regional broader market index) Market Overweight (MO) - Expect the industry to perform better than the primary market index for the region (S&P 500 in the US) over the next 12 months Market Weight (MW) - Expect the industry to perform approximately in line with the primary market index for the region (S&P 500 in the US) over the next 12 months Market Underweight (MU) - Expect the industry to underperform the primary market index for the region (S&P 500 in the US) over the next 12 months

Edward Wolfe, Airfreight & Surface Transportation - Railroads
Union Pacific, Pacer International Inc , Norfolk Southern, CSX Corporation, Canadian Pacific Railway (Canada), Canadian Pacific Railway (US), Canadian National (Canada), Canadian National (US), Burlington Northern Santa Fe

Bear, Stearns & Co Inc Ratings Distribution as of September 30, 2007 Percentage of BSC universe with this rating / Percentage of these companies which were BSC investment banking clients in the last 12 months Outperform (Buy) 44 5 / 15 6 Peer Perform (Neutral) 48 4 / 9 3 Underperform (Sell) 7 1 / 6 5

OTHER DISCLAIMERS

This report has been prepared by Bear, Stearns & Co Inc , Bear, Stearns International Limited or Bear Stearns Asia Limited (together with their affiliates, "Bear Stearns"), as indicated on the cover page hereof Responsibility for the content of this report has been accepted by Bear, Stearns & Co Inc for distribution in the United States If you are a recipient of this publication in the United States, orders in any securities referred to herein should be placed with Bear, Stearns & Co Inc This report has been approved for publication in the United Kingdom by Bear, Stearns International Limited, which is authorized and regulated by the United Kingdom Financial Services Authority U K retail clients should contact their Bear, Stearns International Limited representatives about the investments concerned This report is distributed in Hong Kong by Bear Stearns Asia Limited, which is regulated by the Securities and Futures Commission of Hong Kong Recipients of this report from Bear Stearns Asia Limited should contact representatives of the latter in relation to any matter referred to herein

Additional information is available upon request

Bear Stearns and its employees, officers, and directors deal as principal in transactions involving the securities referred to herein (or options or other instruments related thereto), including in transactions which may be contrary to any recommendations contained herein Bear Stearns and its employees may also have engaged in transactions with issuers identified herein Bear Stearns is affiliated with a specialist that may make a market in the securities of the issuers referred to in this document, and such specialist may have a position (long or short) and may be on the opposite side of public orders in such securities

This publication does not constitute an offer or solicitation of any transaction in any securities referred to herein Any recommendation contained herein may not be suitable for all investors Although the information contained in the subject report (not including disclosures contained herein) has been obtained from sources we believe to be reliable, the accuracy and completeness of such information and the opinions expressed herein cannot be guaranteed This publication and any recommendation contained herein speak only as of the date hereof and are subject to change without notice Bear Stearns and its affiliated companies and employees shall have no obligation to update or amend any information or opinion contained herein

This publication is being furnished to you for informational purposes only and on the condition that it will not form the sole basis for any investment decision Each investor must make their own determination of the appropriateness of an investment in any securities referred to herein based on the tax, or other considerations applicable to such investor and its own investment strategy By virtue of this publication, neither Bear Stearns nor any of its employees, nor any data provider or any of its employees shall be responsible for any investment decision This report may not be reproduced, distributed, or published without the prior consent of Bear Stearns

This report may discuss numerous securities, some of which may not be qualified for sale in certain states and may therefore not be offered to investors in such states This document should not be construed as providing investment services Investing in non-U S securities including ADRs involves significant risks such as fluctuation of exchange rates that may have adverse effects on the value or price of income derived from the security Securities of some foreign companies may be less liquid and prices more volatile than securities of U S companies Securities of non-U S issuers may not be registered with or subject to Securities and Exchange Commission reporting requirements, therefore, information regarding such issuers may be limited

NOTE TO ACCOUNT EXECUTIVES For securities that are not listed on the NYSE, AMEX, or Nasdaq National Market System, check the Compliance page of the Bear Stearns Intranet site for State Blue Sky data prior to soliciting or accepting orders from clients CIR 230 Disclaimer Bear Stearns does not provide tax, legal or accounting advice You should consult your own tax, legal and accounting advisors before engaging in any transaction In order for Bear Stearns to comply with Internal Revenue Service Circular 230 (if applicable), you are notified that any discussion of U S federal tax issues contained or referred to herein is not intended or written to be used, and cannot be used, for the purpose of (A) avoiding penalties that may be imposed under the Internal Revenue Code, nor (B) promoting, marketing or recommending to another party any transaction or matter discussed herein

EASTERN RAILROADS

	CSX				NSC			
	F07 Week 52	6 wk rolling	QTD	YTD	F07 Week 52	6 wk rolling	QTD	YTD
Intermodal	-10 9%	-3 0%	-4 2%	-3 4%	-4 5%	-2 5%	-4 2%	-4 2%
Automotive	-10 1%	-9 4%	-3 5%	-5 1%	-32 4%	-4 0%	2 1%	-5 0%
Coal	-12 5%	2 9%	2 2%	-1 8%	-2 0%	-6 5%	-5 2%	-3 1%
Grain	2 4%	3 6%	-1 1%	-3 1%	-9 5%	-1 7%	1 8%	0 0%
Chemicals	1 8%	7 1%	5 8%	2 6%	5 2%	2 3%	4 2%	3 3%
Paper/Lumber	-14 0%	-12 6%	-14 1%	-12 6%	-12 2%	-9 8%	-9 3%	-8 9%
Metals	0 8%	0 3%	-3 3%	-2 2%	9 2%	3 9%	3 2%	-7 0%
Minerals/Stone	-10 7%	-8 2%	-6 8%	-7 6%	-8 3%	-6 4%	-3 7%	-4 1%
Total Carloads	**-8 6%**	**-2 5%**	**-3 1%**	**-3.4%**	**-4 7%**	**-3 4%**	**-3 0%**	**-3 9%**

WESTERN RAILROADS

	BNI				UNP			
	F07 Week 52	6 wk rolling	QTD	YTD	F07 Week 52	6 wk rolling	QTD	YTD
Intermodal	-11 8%	-7 5%	-8 9%	-6 6%	-9 0%	-1 4%	-0 9%	0 5%
Automotive	-17 9%	-8 6%	-4 0%	-3 1%	-20 5%	-5 3%	-3 2%	-4 2%
Coal	-1 6%	-0 9%	0 3%	0 3%	-4 1%	-0 1%	3 0%	0 5%
Grain	6 0%	10 5%	12 8%	3 3%	1 0%	1 9%	5 0%	-4 8%
Chemicals	0 9%	7 9%	7 3%	11 5%	1 0%	3 7%	5 5%	3 3%
Paper/Lumber	-28 1%	-17 8%	-17 3%	-18 6%	-22 4%	-13 9%	-13 0%	-15 8%
Metals	-6 3%	2 1%	2 5%	0 1%	1 7%	0 6%	-0 5%	-4 0%
Minerals/Stone	9 6%	17 6%	7 6%	-1 1%	1 9%	5 5%	3 7%	-6 9%
Total Carloads	**-6 3%**	**-2 6%**	**-3 0%**	**-3 1%**	**-6 9%**	**-1 2%**	**0 1%**	**-1 3%**

CANADIAN RAILROADS

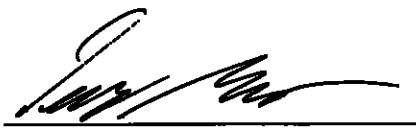
	CN				CP			
	F07 Week 52	6 wk rolling	QTD	YTD	F07 Week 52	6 wk rolling	QTD	YTD
Intermodal	5 3%	4 5%	4 2%	0 1%	2 9%	7 0%	6 9%	6 7%
Automotive	-28 5%	-6 6%	6 5%	4 1%	-11 4%	-2 9%	6 3%	2 4%
Coal	7 9%	-3 8%	-4 8%	-10 9%	-6 4%	-2 2%	-5 7%	-4 1%
Grain	-13 5%	-5 5%	-1 2%	-2 0%	-24 5%	-2 3%	-4 7%	-0 2%
Chemicals	0 2%	2 6%	5 0%	4 4%	-11 5%	3 7%	5 1%	12 2%
Paper/Lumber	-29 1%	-15 7%	-13 1%	-12 7%	-29 3%	-14 0%	-12 3%	-16 3%
Metals	27 3%	15 7%	14 1%	6 2%	14 4%	16 8%	12 0%	-3 8%
Minerals/Stone	-2 9%	4 9%	2 0%	-4 8%	-13 7%	-6 3%	-3 3%	-3 2%
Total Carloads	**-1 9%**	**5 0%**	**5 3%**	**-1 1%**	**-5 3%**	**2 6%**	**2 7%**	**2 8%**

SMALL CAP RAILROADS

	KCSM (Mexico only)				KCS (U S only)			
	F07 Week 52	6 wk rolling	QTD	YTD	F07 Week 52	6 wk rolling	QTD	YTD
Intermodal	34 4%	14 9%	16 3%	14 1%	-59 8%	-49 0%	-34 3%	-19 0%
Automotive	-47 5%	-1 0%	-1 2%	2 7%	-31 5%	29 7%	44 5%	32 2%
Coal	0 0%	507 5%	1194 9%	552 0%	-18 9%	-0 6%	-1 7%	3 0%
Grain	-29 5%	-19 9%	-13 0%	0 2%	-15 8%	-2 4%	-2 2%	-0 9%
Chemicals	-21 4%	-15 6%	-12 5%	-6 8%	19 6%	16 1%	12 8%	5 4%
Paper/Lumber	-33 5%	-23 5%	-25 7%	-18 1%	-3 9%	-9 2%	-8 5%	-8 6%
Metals	-8 3%	-4 2%	-9 7%	-14 3%	12 4%	7 1%	11 1%	-5 5%
Minerals/Stone	10 1%	14 6%	15 0%	8 0%	44 6%	1 9%	8 1%	2 6%
Total Carloads	**-7 6%**	**-1 6%**	**-0 3%**	**0.3%**	**-21 4%**	**-13 4%**	**-9 6%**	**-5 0%**

Certificate of Service

I hereby certify that I have on this 5th day of March 2008, served a copy of the foregoing Complainant's Reply Evidence on Paul Moates and Paul Hemmersbaugh, Sidley and Austin, 1501 K Street, NW, Washington, D C 20005, via hand delivery and email



Jeffrey O. Moreno